147 U.S. 72

RECORD, CASE No. 13,592.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 386. 61

JOHN E. ALEXANDRE, J. JOSEPH ALEXANDRE, AND J. HENRY ALEXANDRE, EXECUTORS OF FRANCIS ALEXANDRE, DECEASED, ET AL., CLAIMANTS OF THE AMERICAN STEAMSHIP "CITY OF NEW YORK," HER ENGINES, &c., APPELLANTS,

vs.

JOHN MACHAN ET AL., OWNERS OF THE BRITISH BARK "HELEN," &c.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED JULY 31, 1889.

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1 To the Honorable William G. Choate, judge of the district court of the United States for the southern district of New York:

The libel of John Machan, of Dundee, Scotland; Robert Reid, William Nicoll, Alexander Thomson, Peter Kinnear, Thomas Erskine Methven, and Elizabeth McGregor, owners of the British bark "Helen," and as carriers of the cargo laden on board thereof and in behalf of the next of kin and legal representatives of Robert Barclay, deceased, late master of said bark, and of Angus Bell, Jacob Gabruelson, James Ross, seamen, and of John Doe—a fictitious name—the steward of said bark, whose real name is at present unknown to the other libellants, deceased, and of William H. Taylor, first mate, and of John Brown, William Marzan, Jens Muller, and George Camilleri, seamen of said bark, against the American steamship "City of New York," her engines, tackle, and apparel, and all persons intervening for their interest therein in a cause of collision, civil and maritime, alleges and propounds as follows:

First. That your libellants, John Machan, Robert Reid, William Nicoll, Alexander Thomson, Peter Kinnear, Thomas Erskine Methven, and Elizabeth McGregor, are the owners of the British bark "Helen," which sailed on a voyage from Havana, laden with a valuable cargo and bound to the port of New York, and on Saturday night, June 28th, at between 10 and 11 o'clock, was in the Atlantic ocean, off the coast of New Jersey, between Absecon and Barnegat, with moderate sail set, her regulation lights properly set and burning brightly, and with a full crew on board, a lookout properly stationed and attentive, and the said bark in all

2 respects properly manned, equipped, and navigated. The wind at the time was W. S. W., and the said bark was heading east by north ½ north, running free, and going at the rate of about three knots an hour. The weather was foggy and the foghorn on said bark was and had been blown a powerful blast at short and regular intervals since the setting in of said fog at about 9 p. m.

Second. At about a quarter before eleven p. m. the whistle of a steamship, which was subsequently found to be the "City of New York," was heard by the watch on the deck of said bark, and the horn on said bark was again and repeatedly blown, and shortly thereafter the mast-head light of said steamship was seen off the port bow of said bark and coming toward said bark at a great rate of speed, and said steamer, keeping on in her course, struck the said bark just forward of her port mizzen rigging, cutting into her so that she sunk in about three minutes, and, with her cargo, became totally lost; that when the said steamer was close upon the said bark and the impending collision inevitable and in the effort to escape the same order was given to port the bark's helm, which order was obeyed, but did not alter the course of said bark more than a point and in a direction away from the said approaching steamer.

Third. That by the sinking of said bark by said collision the said

Robert Barclay, master, and Angus Bell, Jacob Gabruelson, and James Ross, seamen, and the said John Doe, steward, were drowned.

Fourth. That said collision happened wholly through the fault of those on board of said steamship, in that they had not a competent and sufficient lookout and were running at too great a speed, and in that they did not slow, stop, and reverse in time to avoid said bark, and those on board said bark were wholly free from fault.

3 Fifth. That by said collision the libellants, the owners of said bark, have suffered damage in the value of the bark and the pending freight, amounting together to the sum of $22,000, and as carrier of the cargo laden on board in the sum of $25,000, and the said master and crew have, by the loss of their personal effects and their employment on said bark, suffered damage in the sum of $5,000.

Sixth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court, and the said steamship "City of New York" is in the port of New York and within the jurisdiction of this honorable court.

Wherefore libellants pray that due process, according to the course of the admiralty, issue against the said steamship "City of New York," her engines, tackle, and apparel, and that all persons having any interest therein may be cited to appear and answer all and singular the matters aforesaid, and that the said steamship may be condemned and sold to pay the damage aforesaid, and that otherwise right and justice may be done.

THOS. B. BOWRING,
Agent for Owners.

Sworn to before me this 3d day of July, 1879.

LEWIS CASS LEDYARD,
[SEAL.] *Notary Public, N. Y. Co.*

SCUDDER & CARTER,
Proctors for Libellants.

4 District Court of the United States for the Southern District of New York.

Filed the third day of July, 1879.

Stipulation for Libellants' Costs.

Entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court on the 3d day of July, in the year of our Lord one thousand eight hundred and seventy-nine, by John Machan and others against the steamship "City of New York," her engines, &c., for the reasons and causes in the said libel mentioned, and praying that process may issue against said steamship, and the parties hereto hereby consenting that in case of default or contumacy on the part of the libellants or their sureties execution

for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall pay all costs and expenses which shall be awarded against them by this court or upon an appeal by the appellate court.

THOS. B. BOWRING.
HENRY BOWRING.

Taken and acknowledged this 3d day of July, 1879, before me—
LEWIS CASS LEDYARD.
[SEAL.] *Notary Public, N. Y. Co.*

5 At a stated term of the district court of the United States of America for the southern district of New York held at the United States court-rooms, in the city of New York, on Thursday, the third day of July, in the year of our Lord one thousand eight hundred and seventy-nine.

Present: The Honorable Wm. G. Choate, district judge.

JOHN MACHAN *et al.*
against
THE STEAMSHIP "CITY OF NEW YORK," HER ENGINES, &c.

And now Francis Alexandre and others, composing the firm of F. Alexandre & Sons, intervening as owners for the interest of themselves in the said steamship, &c., appear before the honorable court and make claim to the said steamship, &c., as the same are attached by the marshal, under process of this court, at the instance of the libellants, John Machan and others, and the said Francis Alexandre and others aver that they were in possession of the said steamship at the time of the attachment thereof, and that the persons above named are the true and *bona fide* owners of the said steamship, and that no other person is the owner thereof; wherefore they pray to defend accordingly.

F. ALEXANDRE & SONS,
By A. OLDRIN SALTER.

A. OLDRIN SALTER,
Proctor for Claimants, 160 Broadway, New York.

6 SOUTHERN DISTRICT OF NEW YORK, *ss:*

A. Oldrin Salter, being duly sworn, deposes and says that he resides in the city of New York; that he is the proctor of the claimants above named; that the owners of said steamship reside in said city, and that this deponent is duly authorized to put in this claim in behalf of the owners of the said steamship, and that the said claim is true of the knowledge of this deponent except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

A. OLDRIN SALTER.

Sworn to and subscribed this 3d day of July, A. D. 1879, before me—

LEWIS CASS LEDYARD,
Notary Public, N. Y. Co.

To the Honorable William G. Choate, judge of the district court of the United States for the southern district of New York:

The answer of Francis Alexandre, John E. Alexandre, J. Henry Alexandre, and J. Joseph Alexandre, composing the firm of Francis Alexandre & Sons, owners of the steamship "City of New York," to the libel of John Machan and others against said steamship alleges as follows:

First. These respondents have no knowledge or information sufficient to form a belief whether the libellants, John Machan and others, were the owners of the bark "Helen."

They admit that said bark "Helen" sailed from Havana, bound to New York, and that on Saturday, June 28th, 1879, between ten and eleven o'clock p. m., she was off the coast of New Jersey, between Absecon and Barnegat, with moderate sail set and with a full crew on board.

7 And, on information and belief, they deny that said bark had her regulation lights properly set and burning brightly, or that she had a lookout properly stationed and attentive, or that said bark was in all respects properly manned, equipped, and navigated, or that the wind at the time was west-southwest, or that the said bark was heading east by north half north.

They admit that the weather was foggy and as to the rate of speed of the bark, and as to the blowing of a fog-horn on board of her, as alleged in the libel, they have not knowledge or information sufficient to form a belief.

Second. With reference to the allegations in the second article of the libel as to the hearing of the steamer's whistle and the blowing of the horn on board the bark, they have not knowledge or information sufficient to form a belief.

They admit that the mast-head light of the steamer was seen, but whether the same was seen off the port bow or off the starboard bow of the bark they have not knowledge or information sufficient to form a belief.

They deny that the said steamer kept on in her course, and they admit that she struck the bark just forward of her port mizzen rigging, and that said bark sank and was lost with her cargo.

They admit that before the collision an order was given to port the bark's helm, which order was obeyed, but they deny that such order was given when the collision was inevitable, or that it did not alter the course of the bark more than a point, or that such alteration was in a direction away from the approaching steamer.

Third. They admit the allegation of the third article of the libel.

Fourth. They deny each and every allegation of the fourth article of the libel.

8 Fifth. They have not knowledge or information sufficient to form a belief as to the allegations of the fifth article of the libel.

Sixth. They admit the sixth article of the libel.

Seventh. And these respondents, further answering, allege that on the 28th day of June last the said steamship "City of New York" left the port of New York bound on a voyage to Havana, and that shortly before ten o'clock in the evening she had reached a point abreast of Barnegat, the weather being then clear overhead, but hazy around the horizon, and the wind was from about south—a light breeze; that about ten minutes after passing Barnegat light the course of the steamship was changed from south by west, which had been her course, to south by west half west.

That this course of the steamer was continued without change till the horn of the bark was blown, as hereafter alleged.

That at or about forty minutes past ten o'clock fog set in and thereafter the whistle of said steamer was blown at intervals of three or four minutes.

That at that time the second mate of said steamship was in the pilot-house in charge of the navigation of said steamship, a quartermaster was at the wheel, a seaman was also in the pilot-house looking out and blowing the steam-whistle, and a lookout was stationed on the stem of the steamship, and that all of said men were competent and skillful and faithfully performed their respective duties.

That the speed of said steamer at that time was about ten knots per hour, which was a moderate speed for such a fog.

That at about ten o'clock and fifty minutes the second mate in the pilot-house heard the blast of a fog-horn about a point or so on the starboard bow of the steamer, whereupon he ordered the wheel of said steamer to be put hard-a-starboard, which order was obeyed and was the proper order, and would have been efficient for
9 the avoiding of the collision but for the change of course on the part of the bark hereafter spoken of.

That at about the time when the order was given to starboard the wheel the lookout on the steamer saw the square sails on the foremast of said bark about a point on the starboard bow of the said steamer and immediately reported a sail on the starboard bow, but that at that time no light whatever was visible on said bark.

That these respondents are not able to state with entire certainty what was the exact course of said bark previous to that time, but they aver that said course was nearly, if not quite, opposite to the course of the steamer, and that she had the wind which was blowing from south about a point or two on her port quarter, and was sailing in such a direction that if she had continued her course without change she would have passed in safety under the stern of the steamer, but that when or almost immediately after the helm of the said steamer was starboarded the helm of said bark was ported and her head began to come up towards the course of the said steamship; that said change of course of said bark was at once seen and reported by the lookout on the steamer and seen by her second mate in the pilot-house, and that as soon as such change was seen and when the head of the steamer had been changed about a point under her starboard helm her helm was put hard-a-port and her engine was stopped and reversed, but that the collision could not then be

avoided, and, though the headway of the steamer was nearly stopped and her head was swung somewhat to starboard under her port wheel, she struck the bark just forward of the mizzen rigging on the port side, and the bark very shortly thereafter sunk with her cargo.

And these respondents allege that the said bark changed her course under her port wheel four or five points before the collision, and that at the time of the collision she was heading about east and said steamer was heading about south or south by west, and that such change of course on the part of the bark carried her across
10 the bow of the said steamship, which had taken the proper measures to avoid her, and but for the said change of course on the part of said bark would have succeeded in doing so.

And these respondents aver that said collision was caused solely by the fault of the bark and in no respect by the fault of the steamer.

And, further, these respondents aver that by the said collision the said steamer received serious injuries, to the amount of eighteen thousand dollars, and was detained a long time in repairing such damages, and that for the damages sustained by them by reason of such injuries to the steamer and her detention for repairing such injuries the owners of said bark are liable to them.

Wherefore these respondents pray that the libel herein may be dismissed, and that they be decreed the amount of damages sustained by them against the libellants, with costs.

A. OLDRIN SALTER,
Proctor for Claimants.

JNO. E. ALEXANDRE.

R. D. BENEDICT, *Advocate.*

Sworn to before me this 30th day of October, 1879.

[SEAL.]

T. W. HAYWARD,
Notary Public, Kings Co.

Certificate on file.

11 To the Honorable William Wallace, judge of the circuit court of the United States for the southern district of New York:

The libel of John Machan, of Dundee, Scotland; Robert Reid, William Nicoll, Alexander Thomson, Peter Kinnear, Thomas Erskine Methven, and Elizabeth McGregor, owners of the British bark Helen and as carriers of the cargo laden on board thereof, and in behalf of the next kin and legal representatives of Robert Barclay, deceased, late master of said bark, and of Angus Bell, Jacob Gabrielson, James Ross, seaman, and John Doe, a fictitious name (the steward of said bark, whose real name is at present unknown to the other libellants), deceased, and of William H. Taylor, first mate, and of John Brown, William Marzan, Jens Muller, and George Camilleri (seamen of said bark), against the American steamship City of New York, her engines, tackle, and apparel, and all persons intervening for their interest therein, in a cause of collision, — and maritime, alleges and propounds as follows:

First. That your libellants, John Machan, Robert Reid, William

Nicoll, Alexander Thomson, Peter Kinnear, Thomas Erskine Methven, and Elizabeth McGregor, are the owners of the British iron bark Helen, which sailed on a voyage from Havana, laden with a valuable cargo, and bound to the port of New York, and on Saturday night, June 28th, at between 10 and 11 o'clock, was in the Atlantic ocean off the coast of New Jersey between Absecon and Barnegat, with moderate sail set, her regulation lights properly
set and burning brightly, and with a full crew on board, a
12 lookout properly stationed and attentive, and the said bark
in all respects properly manned, equipped, and navigated. The wind at the time appeared to be by said bark's compasses W. S. W., and the said bark was heading, as it appeared by said compasses, east by north ½ north, running free and going at the rate of about three knots an hour. The weather was foggy, and the foghorn on said bark was and had been blow-n- a powerful blast at short and regular intervals since the setting in of said fog, at about 9 p. m.

Second. At about quarter before eleven p. m. the whistle of a steamship which was subsequently found to be the City of New York was heard by the watch on the deck of said bark, and the horn on said bark was again and repeatedly blown, and shortly thereafter the mast-head light of the said steamship was seen off the port bow of said bark and coming towards said bark at a great speed, and said steamer, keeping on in her course, struck the said bark just forward of her port mizzen rigging, cutting into her so that she sunk in about three minutes and, with her cago, became totally lost; that when the said steamer was close upon the said bark and the impending collision inevitable, and in the effort to escape the same, order was given to port the bark's helm, which order was obeyed, but did not alter the course of said bark more than a point and in a direction away from the said approaching steamer.

Third. That by the sinking of said bark by said collision the said
Robert Barclay, master, and Angus Bell, Jacob Gabrielson,
13 and James Ross, seamen, and the said John Doe, steward,
were drowned.

Fourth. That the said bark was an iron vessel and had a list to starboard, and her compasses were affected by those facts, and she had a deviation card on board, by means of which correction- in the readings of said compasses were made, which deviation card was lost with said vessel, and, the master being drowned, libellants were unable to more accurately state the said deviation than that it was between one and three points on different courses.

Fifth. That said collision happened wholly through the fault of those on board of said steamship, in that they had not a competent and sufficient lookout and were running at too great a speed and in that they did not slow, stop, and reverse in time to avoid said bark, and those on board said bark were wholly free from fault.

Sixth. That by said collision the libellants, the owners of said bark, have suffered damage in the value of the said bark and the pending freight, amounting together to the sum of $16,289.59, and as carriers of the cargo laden on board in the sum of $20,055.43,

and the said master and crew have, by the loss of their personal effects and their employment on said bark, suffered damages in the sum of $5,000.00.

Seventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court, and the said steamship City of New York was, when the libel herein was filed, in the port of New York and within the jurisdiction of this honorable court.

14 Wherefore libellants pray that all persons having any interest in said steamship City of New York may be cited to appear and answer all and singular the matters aforesaid, and that the said steamship may be condemned and sold to pay the damage aforesaid, and that otherwise right and justice may be done.

THOS. B. BOWRING,
Agent for Libellants.

Sworn to before me this sixth day of December, 1886.
LAWRENCE KNEELAND,
[SEAL.] *Notary Public, Kings Co.*

Cert. filed in New York Co.

GEO. A. BLACK,
Proctors for Libellants.

(Endorsed:) U. S. circuit court, southern dist. of N. Y. John Machan *et al. vs.* S. S. City of New York. Amended libel. Geo. A. Black, proc. for l'b'ts, 71 Wall St., N. Y. U. S. circuit court. Filed Dec. 7, 1886. Timothy Griffith, clerk.

15 U. S. Circuit Court, Southern District of New York.

JOHN MACHAN *et al.*
against
THE STEAMSHIP CITY OF NEW YORK, &c.

The respondents and claimants in this cause hereby except to the amended libel of the libellants herein as follows:

First. They except to the first article of the libel for the reason that while it avers that the wind "appeared to be by said bark's compass W. S. W." it contains no allegation as to how the wind actually was.

Second. The- except to the same article for the reason that while it avers that said bark "was heading, as it appeared by said compasses, east by north ½ north" it contains no allegation as to how she was actually heading.

Third. They except to the fourth article of the amended libel for the reason that it contains no allegation as to what was the amount of the alleged deviation on the course which the bark was on during the evening before the collision.

Dated New York, December 10, 1886.

A. O. SALTER,
Proctor for Claimants.

16 R. D. BENEDICT, *Adr.*

(Endorsed:) U. S. circuit court, so. dist. of New York. John Machan *et al.* against The Steamship "City of New York," &c. Claimants' & respondents' exceptions to libellants' amended libel herein. A. O. Salter, resp'd'ts' & cl'm'ts' proctor, 67 Liberty street, N. Y. city. U. S. circuit court. Filed Dec. 10, 1886. Timothy Griffith, clerk.

17 To the Honorable William Wallace, judge of the circuit court of the United States for the southern district of New York:

The amended libel of John Machan, of Dundee, Scotland; Robert Reid, William Nicoll, Alexander Thomson, Peter Kinnear, Thomas Erskine Methven, and Elizabeth McGregor, owners of the British bark "Helen" and as carriers of the cargo laden on board thereof, and in behalf of the next of kin and legal representatives of Robert Barclay, deceased, late master of said bark, and of Angus Bell, Jacob Gabrielson, James Ross, seaman, and John Doe, a fictitious name (the steward of said bark, whose real name is at present unknown to the other libellants), deceased, and of William H. Taylor, first mate, and of John Brown, William Marzan, Jens Muller, and George Camilleri (seaman of said bark), against the American steamship "City of New York," her engines, tackle, and apparel, and all persons intervening for their interest therein, in a cause of collision, civil and maritime, alleges and propounds as follows:

First. That your libellants, John Machan, Robert Reid, William Nicoll, Alexander Thomson, Peter Kinnear, Thomas Erskine Methven, and Elizabeth McGregor, are the owners of the British iron bark "Helen," which sailed on a voyage from Havana, laden with a valuable cargo, and bound for the port of New York, and on Saturday night, June 28th, 1879, at between 10 and 11 o'clock, was in the Atlantic ocean off the coast of New Jersey between Ab-

18 secon and Barnegat, with moderate sail set, her regulation lights properly set and burning brightly, and with a full crew on board, a lookout properly stationed and attentive, and the said bark in all respects properly manned, equipped, and navigated. The wind at the time appeared to be, by said bark's compasses, W. S. W. Libellants believe that the true direction of the wind was S. W., and that the compasses of the bark indicated it to be W. S. W. for the reasons hereinafter stated. The said bark was heading, as it appeared by said compasses, east by north one-half north, and libellants believe her true heading was N. E. ½ east, and that the said heading appeared to be east by north ½ north by said bark's compasses for the reasons hereinafter stated. The bark was running free and going at the rate of about three knots an hour. The weather was foggy, and the fog-horn on said bark was and had been blowing a powerful blast at short and regular intervals since the setting in of said fog, at about 9 p. m.

Second. At about a quarter before eleven p. m. the whistle of a steamship — was subsequenty found to be the "City of New York" was heard by the watch on the deck of said bark, and the horn on said bark was again and repeatedly blown, and shortly thereafter the mast-head light of the said steamship was seen off the port bow

of said bark and coming toward said bark at a great rate of speed, and said steamer, keeping on in her course, struck the said bark just forward of her port mizzen rigging, cutting into her so that she sank in about three minutes and, with her cargo, became totally
19 lost; that when the said steamer was close upon the said bark and the impending collision inevitable, and in the effort to escape the same, order was given to port the bark's helm, which order was obeyed, but did not alter the course of said bark more than a point and in a direction away from the said approaching steamer.

Third. That by the sinking of said bark by said collision the said Robert Barclay, master, and Angus Bell, Jacob Gabrielson, and James Ross, seamen, and the said John Doe, steward, were drowned.

Fourth. That the said bark was an iron vessel and had a list to starboard, and her compasses were affected by those facts, and she had a deviation card on board, by means of which corrections in the readings of said compasses were made, which deviation card was lost with said vessel, and, the master being drowned, libellants are unable to more accurately state the said deviation than that it was between one and three points on different courses, and libellants believe that such deviation on a true N. E. ½ E. course was two points, so that the course appeared by said bark's compasses to be east by north ½ north.

Fifth. That said collision happened wholly through the fault of those on board of said steamship, in that they had not a competent and sufficient lookout and were running at too great a speed and in that they did not slow, stop, and reverse in time to avoid said bark, and those on board said bark were wholly free from fault.

20 Sixth. That by said collision the libellants, the owners of said bark, have suffered damage in the value of the said bark and the pending freight, amounting together to the sum of $16,289.59, and as carriers of the cargo laden on board in the sum of $20,055.43, and the said master and crew by the loss of their personal effects and their employment on said bark suffered damage in the sum of $5,000.00.

Seventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court, and the said steamship "City of New York" was, when the libel herein was filed, in the port of New York and within the jurisdiction of this honorable court.

Wherefore libellants pray that all persons having any interest in the said steamship "City of New York" may be cited to appear and answer all and singular the matters aforesaid, and that the said steamship may be condemned and sold to pay the damages aforesaid, and that otherwise right and justice may be done.

JOHN MACHAN AND OTHERS.
THOS. B. BOWRING, *Agent.*

Sworn to before me this 12th day of February, 1887.
LAWRENCE KNEELAND,
[SEAL.] *Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

GEO. A. BLACK,
Proctor for Libellants.

21 (Endorsed:) U. S. circuit court, southern dist. of N. Y. John Machan *et al. vs.* The Steamship "City of New York," &c. Amended libel. Geo. A. Black, proc. for lib'ts, 71 Wall St., N. Y. U. S. circuit court. Filed Feb. 15, 1887. Timothy Griffith, clerk.

22 To the Honorable William H. Wallace, judge of the circuit court of the United States for the southern district of New York:

The answer of Francis Alexandre, John E. Alexandre, J. Henry Alexandre, and J. Joseph Alexandre, composing the firm of Francis Alexandre & Sons, owners of the steamship "City of New York," to the amended libel of John Machan and others against said steamship alleges as follows:

First. They have no knowledge or information sufficient to form a belief as to the allegation in the first article of the libel as to the ownership of the bark "Helen."

They admit that said bark "Helen" sailed from Havana bound to New York, and that on Saturday, June 28th, 1879, between 10 and 11 o'clock p. m., she was off the coast of New Jersey between Absecon and Barnegat, with moderate sail set and with a full crew on board.

And on information and belief they deny that said bark had her regulation lights properly set and burning brightly or had a lookout properly stationed and attentive, or that said bark was in all respects properly manned, equipped, and navigated, or that the wind at the time appeared to be by said bark's compasses W. S. W., or that the true direction of the wind was S. W., or that the compasses of the bark indicated it to be W. S. W., or that the bark was heading, as it appeared by said compasses, east by north one-

23 half north, or that her true heading was N. E. ½ E., or that the said heading appeared by said bark's compasses to be east by north ½ north, or that she was running at the rate of only about three knots an hour.

They admit that the bark was running free and that the weather was foggy. As to the blowing of a fog-horn on the bark, as alleged in the libel, they have no knowledge sufficient to form a belief.

Second. With reference to the allegations in the second article of the libel as to the hearing of the steamer's whistle and the blowing of the horn on board the bark, they have not knowledge or information sufficient to form a belief.

They admit that the mast-head light of the steamer was seen, but whether the same was seen off the port bow or off the starboard bow

of the bark they have not knowledge or information sufficient to form a belief.

They deny that the said steamer kept on in her course, and they admit that she struck the bark just forward of her port mizzen rigging, and that said bark sank and was lost with her cargo.

They admit that before the collision an order was given to port the bark's helm, which order was obeyed; but they deny that such order was given when the collision was inevitable, or that it did not alter the course of the bark more than a point, or that such alteration was in a direction away from the approaching steamer.

Third. They admit the allegation of the third article of the libel.

24 Fourth. They admit that said bark was an iron vessel.

They have no knowledge whether said bark had a list to starboard, or whether her compasses were affected by those facts, or whether she had a deviation card on board, or whether there was a deviation of the compasses of said bark on different courses, or how much it was, if any, or whether such deviation on a true N. E. $\frac{1}{2}$ E. course was two points or anything at all.

Fifth. They deny each and every allegation of the fifth article of the libel.

Sixth. They have not knowledge or information sufficient to form a belief as to the allegations of the sixth article of the libel.

Seventh. They admit the seventh article of the libel.

Eight-. And these respondents, further answering, allege that on the 28th day of June last the said steamship "City of New York" left the port of New York, bound on a voyage to Havana, and that shortly before ten o'clock in the evening she had reached a point abreast of Barnegat, the weather being then clear overhead but hazy around the horizon, and the wind was from about south—a light breeze; that about ten minutes after passing Barnegat light the course of the steamship was changed from south by west, which had been her course, to south by west half west.

That this course of the steamer was continued without change till the horn of the bark was blown, as hereafter alleged.

25 That at or about forty minutes past ten o'clock fog set in, and thereafter the whistle of said steamer was blown at intervals of three or four minutes.

That at that time the second mate of said steamship was in the pilot-house in charge of the navigation of said steamship, a quartermaster was at the wheel, a seaman was also in the pilot-house looking out and blowing the steam-whistle, and a lookout was stationed on the stem of the steamship, and that all of said men were competent and skillful and faithfully performed their respective duties.

That the speed of said steamer at that time was about ten knots per hour, which was a moderate speed for such a fog.

That at about ten o'clock and fifty minutes the second mate in the pilot-house heard the blast of a fog-horn about a point or so on the starboard bow of the steamer, whereupon he ordered the wheel of said steamer to be put hard-a-starboard, which order was obeyed and was the proper order, and would have been efficient for the

avoiding of the collision but for the change of course on the part of the bark hereafter spoken of.

That at about the time when the order was given to starboard the wheel the lookout on the steamer saw the square sails on the foremast of said bark about a point on the starboard bow of the said steamer and immediately reported a sail on the starboard bow, but that at that time no light whatever was visible on said bark.

26 That these respondents are not able to state with entire certainty what was the exact course of said bark previous to that time, but they aver that said course was nearly if not quite opposite to the course of the steamer, and that she had the wind, which was blowing from south, about a point or two on her starboard quarter, and was sailing in such a direction that if she had continued her course without change she would have passed in safety under the stern of the steamer, but that when or almost immediately after the helm of the said steamer was starboard the helm of said bark was ported and her head began to come up towards the course of the said steamship; that said change of course of said bark was at once seen and reported by the lookout on the steamer and seen by her second mate in the pilot-house, and that as soon as such change was seen and when the head of the steamer had been changed about a point under her starboard helm her helm was put hard-a-port and her engine was stopped and reversed, but that the collision could not then be avoided, and, though the headway of the steamer was nearly stopped and her head was swung somewhat to starboard under her port wheel, she struck the bark just forward of the mizzen rigging on the port side, and the bark very shortly thereafter sunk with her cargo.

And these respondents allege that the said bark changed her course under her port wheel four or five points before the collision, and that at the time of the collision she was heading about east and said steamer was heading about south or south by west, and

27 that such change of course on the part of the bark carried her across the bow of the said steamship, which had taken the proper measures to avoid her, and, but for the said change of course on the part of said bark, would have succeeded in doing so.

And these respondents aver that said collision was caused solely by the fault of the bark, and in no respect by the fault of the steamer.

And, further, these respondents aver that by the said collision the said steamer received serious injuries to the amount of eighteen thousand dollars and was detained a long time in repairing such damages, and that for the damages sustained by them by reason of such injuries to the steamer and her detention for repairing such injuries the owners of said bark are liable to them.

Wherefore these respondents pray that the libel herein may be dismissed, and that they be decreed the amount of damages sustained by them against the libellants, with costs.

JNO. E. ALEXANDRE.

Sworn to before me this 26 day of February, 1887.

JAMES P. CAMPBELL,
[SEAL.] *Notary Public, N. Y. County.*

A. OLDRIN SALTER,
Proctor for Claimants.
R. D. BENEDICT, *Advocate.*

28 (Endorsed:) U. S. circuit court, southern district of New York. John Machan *et al.* against The Steamship "City of New York," &c. Answer. A. Oldrin Salter, proctor for claimants, 67 Liberty street, New York city. U. S. circuit court. Filed Feb. 26, 1887. Timothy Griffith, clerk.

29 At a stated term of the district court of the United States of America for the southern district of New York held at the United States court-rooms, in the city of New York, on Tuesday, the 20th day of November, in the year of our Lord one thousand eight hundred and eighty-three.

Present: The Honorable Addison Brown, district judge.

JOHN MACHAN *et al.*
against
THE STEAMSHIP "CITY OF NEW YORK," HER TACKLE, &c.

This case coming on to be heard on the pleadings and proofs and argued by the counsel for the respective parties and deliberation being had—

It is now ordered, adjudged, and decreed that the collision in the pleadings mentioned was due to fault on the part of both the
30 bark "Helen" and the steamship "City of New York," and that the damages arising from said collision be apportioned between said vessels, and that for loss of cargo each vessel be liable *in solido*.

And, it appearing that the owners of the "City of New York" have also suffered damage by reason of said collision, it is ordered that the answer in this cause be amended by averring the fact of such damage.

And it is further ordered that the libellants have leave to apply to the court to amend their libel without being prejudiced by the entry of this decree.

And it is further ordered that it be referred to Samuel H. Lyman, a commissioner of the United States circuit court, to ascertain and compute, on evidence submitted to him, the amount of the damages sustained by each of the parties by reason of the said collision and to report the same to this court with all convenient speed, and that all further questions of liability, including claims of officers and crew, be reserved until the coming in of said report.

ADDISON BROWN.

31 At a stated term of the district court of the United States for the southern district of New York held at the U. S. post-

office building, in the city of New York, on the 24th day of February, 1886.

Present: Hon. Addison Brown, district judge.

JOHN MACHAN *et al.*
against
THE STEAMSHIP "CITY OF NEW YORK."

A motion having been made by the libellants to amend the decree entered herein on the 2d day of July, 1885, and counsel for the respective parties having been heard—

It is now ordered that the said decree be amended so as to read as follows:

32 At a stated term of the district court of the United States for the southern district of New York held at the U. S. post-office building, in the city of New York, on the 2d day of July, 1885.

Present: Hon. Addison Brown, district judge.

JOHN MACHAN *et al.*
against
THE STEAMSHIP "CITY OF NEW YORK."

This case having been tried and an interlocutory decree entered herein on the 20th day of November, 1883, whereby it was ordered, adjudged, and decreed that the collision mentioned in the pleadings was due to fault on the part of both the bark "Helen" and the steamship "City of New York," and that the damages arising from said collision be apportioned between said vessels, and that for the loss of cargo each vessel be adjudged liable *in solido;* and further ordering that it be referred to Samuel H. Lyman, commissioner, to ascertain and compute the amount of the damages sustained by each of the parties by reason of the said collision, and that all further questions of liability, including claims of officers and crew, be reserved until the coming in of said report; and the said reference having been proceeded with, and the report of said commissioner, bearing date March 24th, 1885, having been filed, and exceptions to said report by both the libellants and the claimants of said steamship having been filed, and said exceptions having been argued and due deliberation had thereon—

It is now ordered, adjudged, and decreed that the first, third, and sixth exceptions of the libellants to said commissioner's re-
33 port be, and the same are hereby, allowed, and that the remaining exceptions be, and the same hereby are, overruled.

And it is further adjudged that the first, second, fourth, fifth, and ninth exceptions of the claimants to said commissioner's report be, and the same are hereby, allowed, and the remaining exceptions be, and the same are hereby, overruled.

And it is further ordered that the damages suffered by the libellants by the collision mentioned in the libel be assessed at and the court hereby fixes the same as follows:

For the loss of the said bark "Helen," her stores and pending freight, at the sum of $16,289.59, with interest thereon from the

28th day of June, 1879, to the 24th day of March, 1885, amounting to the sum of $5,609.05, and together amounting to the sum of $21,898.64.

For the loss of personal effects of Captain Barclay, $1,026.25, with interest thereon from the date of said collision, June 28th, 1879, to the date of said report, amounting to $353.55, together amounting to the sum of $1,379.80.

For the loss of the personal effects belonging to William H. Taylor the sum of $220.83, with interest thereon from June 28th, 1879, to March 24th, 1885, amounting to $75.96, and together amounting to $296.79.

For the loss of personal effects of John Brown, $100, with interest thereon from June 28th, 1879, to March 24th, 1885, amounting to $34.40, and together amounting to $134.40.

For the loss of personal effects of George Camilleri, $73.87, with interest thereon from June 28, 1879, to March 24, 1885, amounting to $25.40, and together amounting to $99.27.

For the loss of personal effects of Wm. Marzan, $88, with interest thereon from June 28th, 1879, to March 24th, 1885, amounting to $30.27, and together amounting to $118.27.

For the loss of personal effects of Jens Moller, $55, with in-
34 terest thereon from June 28th, 1879, to March 24th, 1885, amounting to $18.92, and together amounting to $73.92.

For the loss of cargo the sum of $20,055.43, with interest from the 13th day of June, 1879, to the 24th day of March, 1885, amounting to the sum of $6,949.21, and together amounting to $27,004.64.

And for the injuries caused the steamship "City of New York" by said collision the several amounts reported by the said Samuel H. Lyman, except the 25th item mentioned in his report of $333.33, which is hereby disallowed, and the sum of $539.85, including interest allowed libellants as an offset for old copper stripped from the bow of said vessel, which two sums, with interest thereon, amounting to $873.17, should be deducted from the damages so reported, leaving the total amount thereof, with interest thereon to the date of the said report, $7,876.39.

And it appearing that the amount of damages sustained by the libellants as owners of the said bark "Helen" and on behalf of the master and crew of said bark amount to the sum of $24,001.09, including interest, and that the amount of damages sustained by the claimants of the "City of New York" amounts to the sum of $7,876.39, including interest to the date of said report—

It is now ordered, adjudged, and decreed that the amount which would be recoverable by the libellants as owners of the bark "Helen" and on behalf of the master and crew of said bark, if this suit was brought by them only as such, be fixed at one-half of $24,001.09, or $12,000.54, less one-half $7,876.39, or $3,938.19, which equals the sum of $8,062.35.

And it further appearing that the damages which the libellants sustained as carriers of said cargo of said bark amounted to the sum of $27,004.64, including interest to the date of the report, which

damages ought also in justice to be apportioned between the two vessels and borne one-half by the owners and master of said bark and one-half by the claimants of the "City of New York," and that the one-half of the amount of such damages for cargo exceeds
35 the amount of damages decreed in favor of the libellants for the benefit of the owners and of the master by the sum of $1,863.10—

It is thereupon adjudged and decreed that the libellants as carriers of said cargo recover of the steamship "City of New York," her tackle, &c., for the use and benefit of the Atlantic Mutual Insurance Co., insurers of said cargo, who have also pending an action *in personam* for their loss, the sum of $27,004.64, together with the sum of $327.56, being the interest on the sum of $20,055.43 from the 24th day of March, 1885, the date of said report, to the date of this decree, and amounting together to the sum of twenty-seven thousand three hundred and thirty-two $\frac{20}{100}$ dollars ($27,332.20) in this action, and that the libellants recover nothing against said steamship or for the interests of the said master and owners of said bark.

And it is further ordered that the said libellants recover of the said steamship "City of New York," her tackle, &c., for the benefit of the following-named persons, officers and seamen of the said bark "Helen," on account of their loss of personal effects, one-half of the several amounts thereof, as before stated, respectively (with interest from the said 24th day of March, 1885, the date of said report, on one-half of the principal amounts, to the date of this decree)—that is to say:

For the use of William H. Taylor, $150.20.
For the use of John Brown, $68.02.
For the use of George Camilleri, $50.24.
For the use of William Marzan, $59.80.
For the use of Jens Moller, $37.41.

And it is further ordered that the libellants recover their costs in this action, taxed at $538.30.

And it is further ordered that unless an appeal intervene within the time limited by law and the rules and practices of this court the claimants, stipulators for the costs and for value, cause the engagements of their several stipulations to be performed and pay the amount thereof into the registry of this court, to be distributed in satisfaction of this decree.

ADDISON BROWN.

36 U. S. District Court, Southern District of New York.

JOHN MACHAN and Others
against
THE STEAMSHIP "CITY OF NEW YORK."

Scudder & Carter, for libellants; A. O. Salter and R. D. Benedict, for claimant.

BROWN, *D. J.:*

The libel in this case was filed by the owners of the iron bark "Helen," a British vessel of about 450 tons burden, bound from Havana to New York, against the steamer "City of New York," bound from New York to Havana, to recover for the loss of the bark and her cargo, valued at $52,000, which were sunk by a collision with the steamer at 10.50 p. m. on the night of June 28th, 1879, off the Jersey coast.

The libellants contend that the wind was W. S. W.; that the bark, from 8.15 p. m. to a few minutes preceding the collision, had been heading E. by N. ½ N. and making three to three and a half knots per hour; that soon after 10 p. m. the weather became foggy, with periods of greater density, and shortly before the collision had become quite thick; that the steamer's fog-whistle was first heard nearly abeam some two or three minutes before the collision; that the steamer's mast-head light was shortly after seen in the same direction, and next the steamer's green light; that the order was then given to "luff a little," which was at once obeyed, but before the wheel could be got down and when the bark had changed her course thereunder not more than one point she was struck on the port side, just forward of the mizzen rigging, by the stern of the steamer; that the bark's fog-horn had been blown properly during the fog, and that her colored lights were properly set and burning.

37 The speed of the steamer was nearly checked at the time of the collision, but the blow was sufficient to cause the bark to sink in about ten fathoms of water in a few minutes afterwards. Five of the bark's crew, including the master, were drowned, and five, including the mate, the wheelsman, and one lookout, were saved, the mate being in charge of the navigation at the time. The respondents contend that the wind was about south; that the course of the steamer was S. by W. ½ W. and her speed about ten knots per hour; that the night was fair, with moonlight; that the fog came on between ten and eleven, and at the time of the collision was such that the vessel's sails could be seen about an eighth of a mile distant; that the faint sound of a horn from the bark was first heard about a point on the starboard bow; that the steamer's wheel was at once starboarded; that the bark's head sails next became first visible about one point on the steamer's starboard bow, apparently coming in a direction about opposite the course of the steamer; that very soon thereafter the bark was seen changing her course to the eastward, swinging around so as to open her masts and show her red light; that the steamer's wheel was thereupon immediately

changed to port and her engines stopped and backed; that at the time of the collision she headed S. S. W. ½ W., having gone about three-quarters of a point to port under her starboard wheel and come back to starboard under her port wheel one and three-quarter points, and that the bark, under her port wheel, had come around so as to be heading at the time of the collision about E. or E. by N., a change of course, as claimed by the respondents, of from four to six points. The respondents contend that when the bark's horn was first heard she was heading about N. E. or N. E. by N.; that she would have been avoided by the steamer under her starboard wheel had the bark kept her course, and that the collision was caused solely by the latter's change of course.

The respondents contend that when the bark's horn was first heard she was heading about N. E. or N. E. by N.; that she would have been avoided by the steamer under her starboard wheel
38 had the bark kept her course, and that the collision was caused solely by the latter's change of course.

The libellants deny that there was any such material change of course by the bark or any other change than a slight luff *in extremis* a few moments before *before* the collision, and then it was unavoidable.

The "City of New York" is a steamer 1,715 tons measurement and 242 feet long. Her greatest speed under steam and sail, according to the testimony, is 13 or 14 knots. Up to the time when her engine was stopped, after sighting the red light of the bark, there had been no slackening of speed since she left New York, and from the evidence it is clear that she was running at the rate of a little over ten knots. There was a strong head wind, described by those on board as very nearly directly ahead, and the master of the "Old Dominion," who was sailing in close company, says the wind was sufficient to retard his vessel a mile and a half per hour. The effect of the wind upon the "City of New York" must have been similar, and as she used no sails it is clear her rate of ten knots prior to making the bark must have been very near her full speed against this strong head wind.

There is no substantial dispute in regard to the density of the fog. An eighth of a mile or a little more may be taken as the distance at which a vessel's sails could be seen on that moonlight night. The bark's head sails, it is claimed, were seen at somewhat more than that distance, though the hull could not be seen.

If the course of the bark had been N. E. by N., as claimed by the respondents, and that course kept by her, and if she were then one point on the steamer's starboard bow, I think it is clear that the steamer, under her starboard wheel, would have cleared the bark whether the steamer's speed were unchecked or had been "slackened" and reduced to a "moderate" speed of from five to seven knots.

The respondents contend, therefore, that the bark was solely responsible for the collision by reason of the change of course which they claim to have shown on the part of the bark, and that

39 the steamer cannot be held chargeable, notwithstanding the fact that she did not at first, on hearing the bark's horn, "slacken" her speed, because such slackening of speed was not necessary to avoid the collision had the bark kept her course.

Rule 21, however, provides that "every steam-vessel when approaching another vessel so as to involve risk of collision shall slacken her speed, and, if necessary, stop and reverse, and every steam-vessel shall, when in a fog, go at a moderate speed.

This rule plainly imposes upon a steamer two duties—(1) to proceed in a fog at a moderate speed; (2) in approaching another vessel so as to involve danger of collision to slacken her speed, and, if necessary, to stop and back. Whenever this rule becomes applicable, then the duties it imposes are absolute and imperative obligations. They are not dependent, in the slightest degree, on the conduct or fault of the other vessel. Negligence in observing these obligations is itself a fault, and if accidents ensue it is incumbent on the vessel neglecting these duties, if she would exonerate herself from liability, to show clearly that this neglect in no way contributed to the collision.

Rule 21, I cannot doubt, is designed not merely to secure safety in case the other vessel observes exactly the duties incumbent on her, but to make navigation less perilous at all events whatever may be the fault of either vessel, and that the consequences of even faulty navigation may be less fatal to life and property.

In this case rule 21 was, I think, plainly applicable to the situation from the time when the horn of the bark was heard upon the steamer's starboard bow. The fog was such that the vessel could not be seen much more than an eighth of a mile apart. When the bark's horn was first heard only a point on the steamer's starboard bow and the course of neither vessel was known to the other, it is plain that the steamer was approaching a sailing vessel so as to involve the risk of collision within the meaning of rule 21 (the D. S. Gregory, 2 Benedict, 226, 234). The place was one where numerous vessels are constantly going up and down the coast. The
40 bark, for aught known to the steamer, might have been going either in the same direction with her or opposite, or beating to windward on her starboard tack, and in the latter case the steamer's starboard helm would have increased the peril. The steamer in this case was going substantially at full speed. She starboarded not upon any present observation of facts in regard to the course of the bark, but merely on surmise as to the most probable mode of avoiding the collision. The object of the sailing rules is to provide safer guides than surmises, however probable, and, to impose definite obligations on each vessel, rule 21 required not only that the steamer should be going at moderate speed, but also that in view of the danger she should slacken her speed. She did neither until the bark came into view, close at hand, and was seen crossing the steamer's bow. The collision was then inevitable, and not until then did the steamer check her full speed of ten knots; that she had not previously slackened her speed was in itself, as I have said, a fault in her navigation, because it was a disobedience of a statutory rule, and

this fault plainly contributed to the collision, because if she had slackened her speed as required when the horn was heard about a point off her starboard bow the collision clearly would not have happened.

The fact, if such be the fact, that the collision would nevertheless not have happened but for the fault of the bark in changing her course across the steamer's bow does not relieve the steamer, because she had no right to disregard the statutory obligation to slacken her speed. The only effect of the other's fault would be to charge the latter also. If slackening speed would have made no difference as to the collision or the results of it, then the rule could not be invoked against her, because immaterial; but the fact here is clear to the contrary, and the steamer is therefore chargeable with contributory negligence because she did not slacken speed as required when, if she had done so, the collision would have been avoided. The same remarks apply in regard to the second clause of rule 21, which required the steamer in this fog to go at moderate speed. The
41 fog, though not very dense, was sufficient to prevent any observation of the lights or of the course of vessels more than about an eighth of a mile distant, and it therefore diminished greatly the ordinary means of avoiding danger. The authorities are quite uniform in requiring a diminution of speed under such circumstances. Whatever "moderate speed" may be under given circumstances, having reference, as it doubtless does, to the steamer's ordinary speed and her ability to stop quickly, the density of the fog, and the means which vessels have of observing each other so as to avoid danger, it is at least something materially less than that full speed which is customary and allowable when there are no obstructions in the way of safe navigation. To continue at full speed, therefore, as the steamer in this case substantially did, until the bark was in sight, was a clear violation of the statutory obligation to go at a moderate speed, and as she would have cleared the bark if her speed had been less she is necessarily chargeable with contributory negligence.

"The Louisiana," 2 Ben., 373, 376.
McCready *vs.* Goldsmith, 18 How., 90.
St. John *vs.* Paine, 10 How., 583.
"The Eleanora," 17 Blatch., 88, 91, 101.
"The Great Eastern," 11 Law Times, N. S., 5.
"The D. S. Gregory," 2 Ben., 168.

The question whether the bark was also in fault presents great embarrassments upon the testimony in this case. Her duty was to keep her course. The libellants strenuously contend that she did so except a slight and immaterial luff of not over one point to the eastward a few moments before the collision, and when the collision was seen to be inevitable. If this was the only change of course made she cannot be charged with fault.

"The Northern Indiana," 3 Bl., 92, 101.
"Genesee Chief," 12 How., 443, 461.
"The Favorita," 18 Wall., 598, 603.
"The Farnley," 1 F. R., 631, 637.

The usual and ordinary course for vessels coming up this
42 part of the coast with a fair wind is N. E. or N. E. by N. The steamer before the bark's horn was heard was going S. by W. ½ W. At the time of the collision the bark, as all the witnesses agree, was heading about E. or E. by N., or about four points to the eastward of the usual course for vessels bound for New York. Three witnesses from the steamer testify that they saw the bark rounding to the eastward when nearly an eighth of a mile distant, so that, while her head sails only were seen at first, her masts by this change of course opened into view.

The mate of the bark, on the other hand, testifies that the captain went below shortly after eight o'clock, and was not again on deck until the collision; that, by the captain's orders, at 8.15 p. m. the bark was put upon a course of E. by N. ½ N., and so continued without change until the slight luff above spoken of, a few moments before the collision. This statement is, to a certain extent, corroborated by the wheelsman, who, at ten o'clock, relieved "Jacob" at the wheel, and, as he says, received from him the course of E. by N. ½ N., which he testifies was kept until a few moments before the collision. "Jacob" was drowned, and there was no further confirmation of this testimony. The question on this branch of the case is, How did the bark come to be heading E. or E. by N. at the time of the collision? Was it through the two prior changes of course, as testified to by the mate, viz., one at 8.15 p. m. from N. E to E. by N. ½ N. and then a slight luff of one point only, just previous to the collision, or was it by a single change only—*i. e*, one luff of about four points from a N. E. course, made after the fog signals were heard and when the bark was seen on the steamer's starboard bow, as testified to by witnesses from the latter? After a good deal of consideration and re-examination of the testimony, I find myself unable to credit the statement of the mate as to the change and course of the bark at and after 8.15 p. m. From the projection of the masts of the "Helen" above water, the precise place of the collision is known. A buoy was placed there and the position subsequently determined
by the light-house board as follows: "From Barnegat light-
43 house, N. ⅛ E. (magnetic), distance 12½ miles; Tucker's Beach light-house, W. S. W. ¾ W. (magnetic), distant 9½ miles, being 6¼ miles from shore, in 10 fathoms at low water." This determination fixes the place of collision about half a mile nearer the shore than appears in the diagram of Captain Trask, based upon previous testimony. Proceeding backwards from the place of collision as thus ascertained, upon the course alleged by the mate, the bark at 8.15 p. m., at the rate of four knots per hour, would be upon the beach near Tucker's light-house; at the rate of three and a half knots she would be near the breakers, about one mile to the eastward of the light; at the rate of three knots she would have been about two miles from the light, and about three-quarters of a mile from land, in four fathoms of water. The speed of the bark during this time is stated by the mate and the wheelsman at from three to four knots; but considering that the bark had come from Cape Henlopen, which she made "in the forenoon" of that day, a distance of about sixty-two

knots, at an average speed of about four and a half knots; that the mate himself says the bark during the day was going only a little faster than in the evening, and the further fact that at 9 p. m. the wind was blowing at the signal station at Barnegat at the rate of twenty-four miles per hour, nearly a gale, and is described by the steamer's witnesses as well as by the captain of the "Old Dominion" as a "strong breeze" of six to eight knots, I think that the speed of the bark cannot have been less than four knots per hour.

The mate further testifies that prior to the alleged change of course at 8.15 p. m. the bark had been sailing N. E. during the day. Tracing still further backward the course of the vessel, accordingly the bark would have been ashore on the shoals above Absecon light, reckoning from her place at 8.15 p. m., as found according to the mate's testimony, and a speed of three and a half knots prior to the collision, or she would have been aground off Atlantic City, reckoning backward from her place at 8.15 p. m., resulting from a speed of only three knots prior to the collision.

44 But if the bark's course be traced back from the place of collision the usual route, say a N. E. course, we should find the bark, at the rate of four knots, at 8.15 p. m. at a point four and three-quarter miles from shore, in nine fathoms of water, about five and one-half miles distant from Tucker's light-house, which would bear about N. N. W., while Barnegat would bear N. N. E., twenty and one-half miles distant, and Absecon light would bear W. S. W., about nine and seven-eighths miles distant. At 8 p. m., when the mate came on deck and observed the lights, Absecon light would have been W. S. W. $\frac{3}{4}$ W., nine miles distant; Tucker's light five and three-fourths, and Barnegat twenty-one and a quarter miles distant. Absecon light would, therefore, be at that time two points on the bark's port quarter and Tucker's light two points forward of her beam. These positions of the vessel and the bearing of lights derived from the ordinary course of vessels coming up the coast and passing through the place of this collision not only agree with the British sailing directions for this region, — which, it must be presumed, the master had a copy, and which he would naturally follow, but they also agree precisely with the position and bearing of the lights which the mate testifies to observing when he came upon deck at 8 p. m., viz., one (Absecon) aft and one (Tucker's beach light) "a little forward of abeam," as he reported it, although it is conceded that he was wrong in naming the lights, and the direction, N. N. E., given by him cannot be correct. Tucker's beach light, a small light, visible at the best but twelve miles, would naturally be only dimly described five and three-quarter miles distant in the twilight, a half an hour after sunset. Absecon light, visible nineteen miles, and then only nine miles distant, would be seen on the quarter, while Barnegat, visible only nineteen miles at best, would in this twilight and twenty-one and a quarter miles distant be invisible.

Upon the previous course given by the mate, on the other hand, whether the speed be taken at three knots or four, the bark at 8

o'clock must have been only a mile or two east by north
45 from Little Egg harbor (Tucker's) light, and at that distance there could not possibly have been any of that difficulty in discovering it which it is obvious there was from the mate's testimony, while Barnegat, 16 to 17 miles distant, in the early evening twilight could not possibly, I think, have been discerned, and if it were seen it would not be a "little forward of abeam" nor even N. N. E., but nearly N. E., or nearly directly ahead, as the bark was then steering, and no light at all could have existed "a little forward of abeam," as the mate testifies that he reported it, nor if the bark were headed E. by N. ½ N. at 8.15 p. m. would Barnegat light, when it afterwards came into view in the mate's watch, have been seen "two points off the port bow," as Brown, then on the lookout, testifies, though Camelleri, the other lookout, says he saw none (and there was no other than Barnegat light which could have been seen) except astern, while that light would have been seen in just that direction, namely, two points off the port bow, if the bark had reached the place of collision by a N. E. course.

The story of the mate as to the course of the bark previous to the collision must for these various reasons, therefore, be rejected as wholly incredible in itself and irreconcilable with his testimony and that of others in regard to the lights. Rejecting the alleged change at 8.15 p. m., there is no other change from the previous northeasterly course which the evidence admits, except that made after the fog signals of the vessels were heard by each other; for not only does the mate say that there was no other change, but as the captain was not on deck it is not to be supposed that the mate would change the course without orders; nor has the court any right, if it finds the mate's statement false as to the alleged change of course at 8.15, to substitute some other time between 8.15 and the collision when such a change might have been made, except the admitted change made shortly before the collision; and, having no other testimony to go upon, it must assume that the previous N. E. course continued until
this last change was made, especially as that course is the cus-
46 tomary one and is found to harmonize with all the other circumstances and probabilities of the case. The usual northeasterly course to the point of collision harmonize-, as I have said, with the distance and bearing of the lights, with the sailing directions, and with the natural course of navigation after making Cape Henlopen. It accords also with the weight of testimony in regard to the wind. All the witnesses on the bark state that the wind was very nearly aft, about a point on the starboard quarter. The mate of the bark testifies that the wind was "W. S. W.," or a little southerly. Evidence was taken from the signal stations from Sandy Hook to Cape May, but none of it makes the wind W. S. W. At Sandy Hook and by one observer at Atlantic City the wind is given as S. W., while the light-house keeper at Atlantic City, and the evidence from Barnegat and from Cape May make the wind south. The testimony of those on board the steamer, as well as that of the master of the "Old Dominion," gives the wind as nearly directly ahead, or about south, while the mate of the bark, in his deposition before the court,

was recorded as giving the wind S. S. W. When examined on that point on the trial he claimed to have subsequently corrected that statement before the consul. The respondent's copy of his deposition gives the wind S. S. W., while the libellant's copy in one place still gives the wind S. S. W. On the whole, I am of opinion that the weight of testimony shows that the wind was somewhere from S. W. to S. S. W., and this confirms the previous conclusion that the bark, up to the time of the collision, had been sailing on a northeast course, since that would bring such a wind about a point on her starboard quarter, as all her witnesses testify. The fact that the bark's jibs were not set and that other sails, which could not draw with an aft wind were furled, confirm the testimony that she was sailing with the wind very near astern. It is not impossible that the course E. by N. ½ N., testified to by the mate and wheelsman, may have been derived from that course adopted for a short time after making Cape Henlopen in the forenoon by the same watch, since that course might for a short time have been nat-
47 urally followed if the captain found himself within a few miles of the cape.

The improbabilities or impossibilities involved in the mate's testimony cannot be accounted for upon any theory of the master's ignorance of his position, for it appears that Cape Henlopen had been made in the forenoon, shortly after the land above Cape May, which is visible some four miles at least, was seen. The day was clear, an azimuth had been taken, and, shortly before 8 p. m., the lead had been thrown. These circumstances show that the master must have known his position perfectly. I cannot doubt, therefore, that he kept the ordinary and prescribed course, running from 3 to 6 miles from shore. There was no reason why he should deviate from it. This usual northeasterly course, continued above Absecon, would carry the bark somewhat further off shore and bring her to the place of collision. The mate's testimony as to the alleged change of course at 8.15 p. m. I must therefore reject, as I have said, because it involves the most violent improbabilities as to the previous navigation of the bark, and is wholly irreconcilable with other accredited facts. I have no right to substitute any later change in place of the one testified to at 8.15 p. m., and hence I must hold that the former course of northeast was continued up to the time of the collision; that there was but one change of course, instead of two, which brought the bark to heading nearly east, and that this change was the luff which her witnesses admit, except that it was a luff of 3 to 4 points instead of one, and begun earlier than they admit, while off the steamer's starboard bow, and not *in extremis*, as they allege.

Little weight can be attached to the testimony of those in the bark that the steamer's whistle, when first heard, seemed about abeam. The reflections of the waves of sound amid banks of fog are such as to render the seeming direction of sounds in a fog wholly unreliable.

The wheelsman of the bark testifies that the order to luff was given when the steamer's mast-head light was seen. There is no
48 reason to suppose this was not seen as early as the vessel's

sails were visible to the lookout on the steamer, and that was probably somewhat over one-eighth of a mile distant, and the light was probably visible earlier than that.

The two vessels were approaching each other from that time at a combined average speed of not exceeding eight knots, considering the change of course and the steamer's diminishing speed. This would give from one to two minutes from the time the mast-head light was visible until the collision, which was sufficient time, I judge, for the bark, with a strong aft wind and no jibs set, to have luffed from 3 to 4 points. From the testimony of those on board the steamer as to what was done after first seeing the bark's sails, it would seem that more than one minute must have elapsed from that time up to the collision. Several of her witnesses estimate the time at from three to four minutes; the mate of the bark estimated it at three; but mere estimates of time under such circumstances are unreliable, and I think from one to two minutes is probably nearer correct, but this was sufficient for the change of 3 to 4 points.

I have not been unmindful of the rule which gives the most credit to a vessel's own witnesses in regard to her own motions, nor of the fact that observations from the steamer as to the bark's course through the fog were in this case necessarily attended with much greater uncertainties than observations made in clear weather; and if the mate had given an account of the bark's course which was in the slightest degree credible and reconcilable with his other testimony and the other facts in the case, so as to furnish a probable and consistent story, it would have been adopted without hesitation, notwithstanding all the steamer's testimony concerning the bark's apparent changes; but as I feel obliged to discredit the mate's testimony as to one of the most important facts in the case and to remark also his suspicious indefiniteness and asserted want of knowledge concerning other important facts in regard to the position of the bark, which he knew shortly before giving his testimony and
49 which it is not probable he had forgotten, such as the result of the azimuth which he himself computed, the distance of the bark from shore, the depth of water on sounding, the time of making Cape Henlopen, &c., there is no alternative but to follow the testimony from the steamer, since this is not only consistent with itself, with the several changes in her own course, which were based upon the fact testified to by her witnesses, but is also consistent with the only probable course which could have brought the bark to the place of collision.

The testimony from the steamer shows that the apparent course of the bark to the northeast, when first observed, a point upon the steamer's starboard bow, would have carried her clear if unchanged.

As this change of three to four points was too great and was commenced too early and too far off from the steamer to be regarded as a change *in extremis*, and as this change of course evidently contributed to the collision, the bark must also be held chargeable with fault, and a decree should be entered for the libellants for the recovery of one-half the excess of their damages over the damages

sustained by the steamer, and a reference directed to ascertain the amount, with costs.

March 5, 1883.

The city of New York, July 1, 1885.

(XXV Fed. Rep., p. 149.)

In admiralty.

Scudder & Carter and Geo. A. Black, for libellants; A. O. Salter, for respondents.

BROWN, *J.*:

Upon the settlement of the decree a question has arisen in regard to the amount recoverable for the loss of the effects of the master and crew of the bark "Helen," which was sunk, and also as regards the application of the sums allowed therefor. Both vessels
50 were held in fault (15 Fed. Rep., 624; 23 Fed. Rep., 616), and the damages were ordered to be divided. The libellants were the owners of the "Helen," and sued to recover for the loss of that ship, and also in behalf of the master and crew for the loss of their effects as well; also as carriers for the recovery of the loss of cargo which belonged to third persons. The report on damages as confirmed shows a loss on account of the bark of $21,898.64; of $2,102.45 on account of the effects of the master and crew, and $27,004.64 on account of the cargo. The damages to the steamship, which were set up by way of recoupment in the answer, amount to $7,876.29. Both vessels being liable *in solido* for the loss of the cargo, the amount that would be recoverable for the loss of the bark must be applied to pay her share for the loss of the cargo, and it is insufficient for that purpose by several thousand dollars. The bark's share of the loss of the cargo is $13,502.31, while one-half the difference of the damages to the two vessels, which is the limit of her recovery against the steamer, is but $7,011.13.

For the effects of the master and crew the libellants claim to recover against the steamer the whole loss upon the authority of the Titan, 23 Fed. Rep., 413. That case, which was one of personal injuries upon a collision, was decided upon the authority of Chicago, M. & S. P. R'y Co. *vs.* Ross, 112 U. S. 377; S. C., 5 Sup. C't Rep., 184. The latter case arose from a collision of railroad trains through the negligence of a conductor to communicate to the engineer the order which had been telegraphed by the superintendent to the conductor. The decision of the Supreme Court was limited to the facts of the case, holding that "the conductor of a railway train who commands its movements, directs when it shall start, at what station it shall stop, at what speed it shall run, and has the general management of it and control over the persons employed upon it, represents the company, and therefore that for injuries resulting from his negligent acts the company is responsible."

Some caution is doubtless to be observed in the application
51 of decisions concerning railways to maritime collisions. In

the case of the "Titan" there was personal fault of the master in command in not assigning any lookout, one of the functions of command; and it is upon this analogy, as regards the command of the vessel, that I understand that decision to be placed. But in the later case of Quinn *vs.* New Jersey Lighterage Co., 23 Fed. Rep., 363, it was held that colaborers take the risks of such negligent acts of the master as are not those of command, but are only such as any employee might perform.

There seems to me considerable doubt whether the decision of the Supreme Court in the Ross case was designed to introduce any modification in the maritime law as regards the liability of a vessel or of her owners to seamen or officers on board for injuries or losses sustained by them in the service of the ship. Such injuries and losses are as old as navigation. The maritime law, as respects personal injuries, has long been considered as well settled in limiting the recovery against the seaman's own vessel to wages for the rest of the voyage and expenses of cure where the owners have not been in any fault. The "City of Alexandria," 17 Fed. Rep., 390, and cases there cited. If any different rule is hereafter to be applied as regards injuries happening through the commands of the master, the present is not such a case. Here the master was below and was not in any personal fault.

Claims for the loss of seamen's effects have been frequently included in the judgments of this court in collision cases where the fault was wholly in the defendant's vessel. But I know of no case in which such claims have ever been adjudicated against the seaman's own vessel where the loss was wholly by the fault of her own officers and men. No such claim could be entertained without overturning one of the cardinal principles of maritime law, which identifies the interests of the mariner with the interests of his ship and affects all with the faults of the ship. As there was fault in this case on the part of the bark as well as on the part of the steamer, the claims of the crew against the steamer must be limited to one-half their damages.

52 There is no rule and no modern precedent, so far as I am aware, for holding the seamen or any of the ship's company below the master responsible to cargo-owners for injuries to cargo arising from mere negligence in the management of the ship; and if they are not legally responsible for such injuries, then their personal effects cannot be held to contribute for the loss of cargo. By the old Rhodian law there was apparently no distinction been master and mariner; each was alike answerable for his acts of negligence and his own acts only. Article 26 provided that "if the master or any of the mariners lying ashore, the ship happens during their absence to perish, whether by night or by day, the master or mariners so lying ashore shall sustain the damage, and those who remain in the ship shall be free; and whatever damage befalls a ship by any one's negligence shall be refunded to the owner by the persons by whose fault it happened." By the eighth article it was provided that "if a master, to whom the ship was intrusted, run away with her, with the consent of the mariners, into a foreign

country, all their goods and whatever they possess shall be seized and sold, and if not sufficient to pay the value of the ship the master and mariners shall be hired out until they have made satisfaction." By article tenth it was also provided that "if by the negligence of master and mariners any damage or shipwreck happen they shall be answerable for it; and, likewise, if by the fault of the merchant the ship and cargo perish he shall sustain the loss; but if a shipwreck happen merely by misfortune, without any failure on either side, what can be saved of the ship and lading shall be prized and brought to a contribution."

In modern maritime law, so far as I can discover, the liability for injuries through negligence is confined to the owners of the ship and to the master, who is responsible for all his subordinates that are appointed by him and are under his control (Story, Ag., 314, 317), and that is the general rule in English and American law.

53 Agents or subordinates are not, in general, responsible to third persons for mere non-feasance or omissions of duty in the course of their employment, there being no privity between them.

Lane *vs.* Cotton, 1 Ld. Raym., 655; Story, Ag., secs. 308, 313; 2 Kay, Shipm., 1153. The liability of seamen for loss or injury to cargo is limited to cases of willful default. A recovery will therefore be allowed for the benefit of the seamen in this case to the extent of one-half the value of their effects without liability over to contribute for the loss of cargo.

By the English and American maritime law the master is responsible for the loss of cargo equally with the owners, without reference to any personal fault of his own, but by reason of his accountability for the acts or omissions of his subordinates, as a kind of subrogated principal, says Story, and qualified owner, although his liability is more restricted on public vessels where he does not appoint his subordinates and is, therefore, not responsible for their defaults. Nicholson *vs.* Mounsey, 15 East, 384; Story, Ag., sec. 314; The "Limerick," 1 Prob. Div., 411. It follows that in this case his personal effects must abide the fate of the ship herself, and, like the ship and owners, be held to make up the ship's share of the loss of cargo. The statute of 1851, limiting the liability of owners, excepted all existing remedies against the master, officer, or mariners for loss or injury of cargo. Rev. St., sec. 4287. The amount of $689.90, being one-half the amount of the master's personal effects, must be applied, therefore, like the amount recoverable for the loss of the ship herself, upon account of one-half the cargo for which the owners and master are alike responsible. After applying both these sums on account of the half of the cargo for which the bark is responsible there will still be a deficiency which the steamer must make good. The result, therefore, is that there must be a decree against the steamer for the whole loss of the cargo, and also for the one-half of the seamen's effects.

After the commencement of the suit *in rem* the Atlantic Mutual Insurance Company, having paid the cargo-owners for a total loss,

commenced a suit *in personam* against the owners of the
54 steamer to recover the value of the cargo. That suit was heard at the same time as the suit *in rem* (see 16 Fed. Rep., 279), but further proceedings were stayed until the settlement of the decree in the suit *in rem*. The libellants in both suits are represented by the same proctors. They now ask to be permitted to enter decrees in both suits—in the suit *in personam* for the whole amount of the value of the cargo; in the suit *in rem* for the amount payable to the seamen, with directions for offsetting the residue against the respondents' liabilities in the other suit. The defendants object to entering decrees in both suits because that would subject them to double appeals, to double expenses, and to additional inconveniences. No practical reasons are suggested for the entering of decrees in both suits. Both sides, it is understood, expect to take an appeal, the amount involved being considerable and the questions close. The whole case on each side can be perfectly presented upon appeal from a single decree in the suit *in rem*, and on such an appeal, which might go to the Supreme Court, both sides would stand upon equal terms. The whole case cannot be so presented upon appeal from a decree in the suit *in personam* alone. In the absence of any good reason, I think the burden of an additional appeal should not be imposed upon the respondents *in personam*. The libellants in the suit *in rem* lawfully represent the rights of the insurers, and the latter, being represented by the same proctors, in effect prosecute and control the suit *in rem*. The only reason for entertaining the suit *in personam* and for not dismissing it upon the plea in bar was that all the respondents had not made themselves personally liable in the suit *in rem* by executing a bond for the release of the vessel. All the objects of the suit *in personam* for the purpose of security will be attained by requiring as a condition of a stay of further proceedings that the respondents shall all execute a stipulation upon any appeal that may be taken from the decree in the suit *in rem*. See The City of Paris, 1 Ben., 529; S. C., 14 Blatchf., 531, 536; The Commander-in-Chief, 1 Wall., 43, 52.

55 A decree may therefore be entered in the latter suit for the payment to the use of the Atlantic Insurance Company of the value of the cargo and interest, and for the use of seamen one-half the amount reported due for their effects, excluding any claim of the master.

United States District Court, Southern District of New York.

JOHN MACHAN *et al.*, Libellants,
against
THE STEAMSHIP "CITY OF NEW YORK;" FRANCIS ALEXANDRE *et al.*, Claimants.

Please take notice that the libellants herein appeal to the next circuit court of the United States for the southern district from the decree entered herein on the 2d day of July, 1885, as amended by the order of this court, dated February 24, 1886, from such part

thereof as directs the damages herein to be apportioned and awards nothing to the owners or master of the bark "Helen" and only one-half of their damages to the crew thereof.

Dated New York, February —, 1886.

GEORGE A. BLACK,
Proctor for Libellants.

To A. Oldrin Salter, proctor for claimants.

56 Circuit Court of the United States for the Southern District of New York.

JOHN MACHAN *et al.*, Libellants and Appellants,
against
THE STEAMSHIP "CITY OF NEW YORK;" FRANCIS ALEXANDRE *et al.*, Claimants and Appellees.

To the honorable the circuit court of the United States for the southern district of New York:

The petition of the appeal of the appellants respectfully shows that on July 3d, 1879, the appellants, John Machan, Robert Reid, William Nicoll, Alexander Thompson, Peter Kinnear, Thomas Erskine, and Elizabeth McGregor, owners of the British bark "Helen" and as carriers of the cargo laden on board, and in behalf of the next of kin and legal representatives of Bobert Barclay, deceased, late master of said bark; William H. Taylor, first mate; John Brown, William Marzan, Jens Moller, and George Camilleri, seaman of said bark, exhibited their libel in the district court of the United States for the southern district of New York against the steamship "City of New York," claiming damages for the loss of said bark and pending freight the sum of $22,000 and for the loss of cargo the sum of $25,000 and for the loss of personal effects of said master and crew the sum of $5,000, and praying that said steamship for the reasons set forth in said libel might be condemned to pay the demands of libellants and costs.

That thereafter Francis Alexandre, John E. Alexandre, J. Henry Alexandre, and J. Joseph Alexandre, composing the firm of
57 Francis Alexandre & Sons, the owners of said steamship "City of New York," duly filed their claim to said steamship and their answer to said libel, praying that said libel might be dismissed with costs, as by reference to said libel and answer will more fully appear; that the said cause came on to be heard before the Hon. Addison Brown, judge of the said district court, upon the depositions and proofs taken in said cause and the testimony and proofs adduced by the respective parties. The said judge, having advised thereon, on the 5th day of March, 1883, filed his opinion, determining that a decree should be entered for libellants for the recovery of one-half of the excess of their damages over the damages sustained by the said steamer; that thereafter additional depositions and proofs were taken and filed in this cause and a motion made for a rehearing therein, which by an order of said district court, made November 7th, 1883, was denied on the ground that libellants

have a right of appeal to the circuit court, wherein the said matters may be considered and determined without prejudice, and for that reason only, and thereafter the said district court made and entered, on the 2d day of November, 1883, an interlocutory decree by which it was ordered and adjudged that the collision mentioned in the pleadings was due to the fault of both the bark "Helen" and the steamship "City of New York," and that the damages arising from said collision be apportioned between said vessels, and that for the loss of cargo each vessel be adjudged liable *in solido*, and ordering a reference to ascertain and compute the amount of damages sustained by each of the parties by reason of the said collision, and reserving all further questions of liability until the coming in of said report. Said report having been filed on March 24, 1885, the said district court made and entered, on the 2d day of July, 1885, a decree herein, which by the order of said district court entered on the 24th day of February, 1886, was amended, and by such decree as amended it was, among other things, ordered that the damages suffered by the libellants for the loss of said bark "Helen,"
58 her stores and pending freight, be assessed and fixed at $16,289.59, with interest from June 28, 1879, to March 24, 1885, amounting to $5,609.05, and together amounting to the sum of $21,898.64, and for the loss of personal effects of Captain Barclay $1,026.25, with interest from June 28, 1879, to the date of said report, amounting to $353.55, and together amounting to $1,379.80, and for the loss of personal effect- of the following-named persons, the crew of said vessel, the several amounts set opposite their names, with interest on each amount from June 28, 1879, to March 24, 1885, as follows:

William H. Taylor, $220.83; interest, $75.96.
John Brown, $100; interest, $34.40.
George Camilleri, $73.87; interest, $25.40.
William Marzan, $88.00; interest, $30.27.
Jens Moller, $55.00; interest, $18.92.

It was by said decree further sentenced and decreed that the libellants, as carriers of said cargo, recover of said steamship for the use and benefit of the Atlantic Mutual Insurance Company, insurers of said cargo, the sum of $27,332.20, and that the libellants recover nothing against said steamship for the interest of said master and as owners of said bark; and it was further adjudged and decreed that the libellants recover for the benefit of said William H. Taylor $150.20; John Brown, $68.02; George Camilleri, $50.24; William Marzan, $69.80; Jens Moller, $37.41, being the one-half of the several amounts of their loss for personal effects.

And these appellants are advised and insist that the said decrees are erroneous, inasmuch as the said bark was without fault, and said damages ought not to have been apportioned between said vessels, and that libellants, as owners of said bark, and said master and seaman should have been adjudged to recover their full damages.

And these appellants, for these and other reasons, appeal from so much of said decree as adjudges said bark in fault for said collision and divides the damages, adjudges them not entitled to recover for

the value of said bark and freight, and adjudges that they
59 and said master are not entitled to recover anything for said master's personal effects, and adjudges that the said crew of said bark are entitled to recover only one-half of their said damages; and on said appeal they intend to make new allegations in the circuit court and introduce the same testimony and proofs on which the same was heard in the district court, which they pray may be returned to this court, and new and further proofs to be taken in this court.

And they pray that the record and proceedings, the proofs, depositions, and exhibits may be returned to said circuit court, and that the said decree may be reversed in the respects aforesaid, or such other decree thereon be made as to said circuit court shall seem just, and that the appellees may be condemned to pay to the appellants their costs and damages in the premises.

GEORGE A. BLACK,
Proctor for Libellants and Appellants.

Know all men by these presents that we, Thomas B. Bowring and F. C. Bowring, are held and firmly bound unto Francis Alexandre, John E. Alexandre, J. Henry Alexandre, and J. Joseph Alexandre, claimants of the steamship "City of New York," in the sum of two hundred and fifty dollars, to be paid to the said Francis Alexandre, John E. Alexandre, J. Henry Alexandre, and J. Joseph Alexandre, their executors, administrators, or assigns; for the payment of which, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 27th day of February, 1886.

Whereas John Machan, Robert Reid, William Nicoll, Alexander Thompson, Peter Kinnear, Thomas Erskine, and Elizabeth McGregor, owners of the British bark "Helen" and in behalf
60 of the next of kin and legal representatives of Robert Barclay, deceased, late master of said bark; William Taylor, first mate; John Brown, William Marzan, Jens Moller, and George Camilleri, seamen of said bark, libellants, have appealed to the circuit court of the United States for the southern district of New York, in the second circuit, from a decree of the district court of the United States for the southern district of New York, bearing date the second day of July, 1885, as amended by an order of the said district court entered on the 24th day of February, 1886, in a suit in which the above-named John Machan *et al.* are libellants against the steamship "City of New York," her engines, boilers, tackle, etc.:

Now, therefore, the condition of this obligation is such that if the above-named appellants, John Machan *et al.*, shall prosecute said appeal to effect and pay all costs which shall be awarded against them as such appellants therein if they shall fail to make said appeal good, then this obligation shall be void; otherwise to remain in full force and effect.

THOS. B. BOWRING. [L. S.]
F. C. BOWRING. [L. S.]

Executed and acknowledged this 27th day of February, 1886.

LAWRENCE KNEELAND,
[SEAL.] *Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

Thomas B. Bowring, being duly sworn, says that he resides
61 in the eastern district of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

THOS. B. BOWRING.

Sworn to before me February 27th, 1886.

LAWRENCE KNEELAND,
[SEAL.] *Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

F. C. Bowring, being duly sworn, says that he resides in the eastern district of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

F. C. BOWRING.

Sworn to before me February 27th, 1886.

LAWRENCE KNEELAND,
[SEAL.] *Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

62 District Court of the United States, Southern District of New York.

JOHN MACHAN *et al.*, Libellants and Respondents,
against
THE AMERICAN STEAMSHIP "CITY OF NEW YORK," &c., Whereof Francis Alexandre, John E. Alexandre, J. Joseph Alexandre, and J. Henry Alexandre are Claimants, Appellants.

Please take notice that the claimants above named hereby appeal to the next circuit court from the whole of the decree entered herein in this court on the 6th day of July, 1885, and from each and every part thereof.

New York, July 21, 1885.

Yours, &c.,

A. OLDRIN SALTER,
Claimants' Proctor.

To Samuel H. Lyman, clerk of the U. S. district court for the southern district of New York; Scudder & Carter, Esqs., libellants' proctors.

63 Circuit Court of the United States, Southern District of New York.

JOHN MACHAN, of Dundee, Scotland; ROBERT REID, WILLIAM Nicoll, Alexander Thomson, Peter Kinnear, Thomas Erskine Methven, and Elizabeth McGregor, Owners of the British Bark "Helen" and as carriers of the cargo laden on board thereof, and on behalf of the next of kin and legal representatives of Robert Barclay, deceased, late master of said bark; and of Angus Bell, Jacob Gabruelson, James Ross, seamen; and of John Doe, a fictitious name, the steward of said bark, whose real name is at present unknown to the other libellants; and of William H. Taylor, first mate; and of John Brown, William Marzan, Jens Moller, and George Camilleri, seamen of said bark, Libellants and Respondents,

against

THE AMERICAN STEAMSHIP "CITY OF NEW YORK," HER ENgines, Tackle, and Apparel, Whereof Francis Alexandre, John E. Alexandre, J. Joseph Alexandre, and J. Henry Alexandre are Claimants, Appellants.

To the honorable the circuit court of the United States for the southern district of New York:

64 The appeal of the above-named appellants respectfully shows—

That on the 3d day of July, 1879, the above-named libellants did exhibit their libel in the district court of the United States for the southern district of New York against the above-named steamship "City of New York," her engines, &c., claiming damages, by reason of the matters and things set forth in said libel, in the sum of fifty-two thousand dollars, and praying that process in due form of law might issue against said steamer, and that the same might be condemned and sold to pay the damages aforesaid, with costs, as by reference to said libel will more fully appear.

That the said claimants did thereafter file a claim to said steamship "City of New York," and did, on the 30th day of October, 1879, file an answer to said libel, praying that the said libel might be dismissed with their costs in that behalf, as by reference to said answer will more fully appear.

That the said cause came on to be heard before the Honorable Addison Brown upon the pleadings, depositions, and proofs taken in said cause and the testimony and proofs adduced by the respective parties, and the said judge, having advised thereon, did, on the 20th day of November, 1883, enter an interlocutory decree, whereby it was ordered, adjudged, and decreed that the collision mentioned in the pleadings was due to fault on the part of both the bark "Helen" and the steamship "City of New York," and that the damages arising from said collision be apportioned between said vessels, and that for loss of cargo each vessel be adjudged liable *in solido;* and further ordering that it be referred to Samuel H. Lyman, commissioner, to ascertain and compute the amount of the damages

sustained by each of the parties by reason of said collision, and that all further questions of liability, including claims of officers and crew, be reserved until the coming in of said report; and the said reference having been proceeded with and the report of said commissioner, bearing date March 24th, 1885, having been filed and exceptions to said report by both the libellants and the claim-
65 ants of said steamship having been filed, and said exceptions having been argued and due deliberation had thereon, the said district court made and entered, on the 2d day of July, 1885, a decree herein, which, by the order of said district court, entered on the 24th day of February, 1886, was amended, and by such decree as amended it was, among other things, ordered that the libellants should recover against the said steamship "City of New York" various amounts, as by said decree will more fully appear; and these appellants are advised and insist that the said decrees are erroneous, inasmuch as the said steamship was without fault, and said damages ought not to have been apportioned between said vessels, and the said libel ought to have been dismissed.

And these appellants, for these and other reasons, appeal from the whole of the said decrees, and on the said appeal they intend to have said cause heard anew in the circuit court on the pleadings and proofs in the district court and other proofs to be introduced in the said circuit court, and they pray that the record and proceedings, the proofs, depositions, and exhibits, may be returned to the said circuit court, and that the said decrees may be reversed and such other decrees thereon be made as to said circuit court shall seem just, and that the appellees may be condemned to pay to the appellants their costs and damages in the premises.

A. OLDRIN SALTER,
Proctor for Claimants and Appellants.

Know all men by these presents that we, Francis Alexandre, John E. Alexandre, J. Joseph Alexandre, and J. Henry Alexandre, are held and firmly bound unto John Machan, Robert Reid, William Nicoll, Alexander Thompson, Peter Kinnear, Thomas Erskine, the next of kin and legal representatives of Robert Barclay, de-
66 ceased; William H. Taylor, John Brown, William Marzan, Jens Moller, and George Camilleri, in the sum of sixty thousand dollars, to be paid to the said John Machan and others above named, their executors, administrators, or assigns; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the seventeenth day of May, in the year of our Lord one thousand eight hundred and eighty-six.

Whereas Francis Alexandre, John E. Alexandre, J. Joseph Alexandre, and J. Henry Alexandre, as appellants, have appealed to the circuit court of the United States for the southern district of New York, in the second circuit, from a decree of the district court of the United States for the said southern district, bearing date the second day of July, 1885, in a suit in which John Machan and

others are libellants against the steamship "City of New York," &c., whereof Francis Alexandre, John E. Alexandre, J. Joseph Alexandre, and J. Henry Alexandre are claimants:

Now, therefore, the condition of this obligation is such that if the above-named appellants, Francis Alexandre, John E. Alexandre, J. Joseph Alexandre, and J. Henry Alexandre, shall prosecute said appeal with effect and pay all damages and costs which shall be awarded against them as such appellants therein if they shall fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

F. ALEXANDRE.
JNO. E. ALEXANDRE.
J. J. ALEXANDRE.
J. H. ALEXANDRE.

Sealed and delivered and taken and acknowledged this 17th day of May, 1886, before me—

JAMES P. CAMPBELL,
[SEAL.] *Notary Public* (129), *New York County.*

67 UNITED STATES OF AMERICA, *Southern District of New York,* } *ss*:

Francis Alexandre, John E. Alexandre, J. Joseph Alexandre, and J. Henry Alexandre, being duly sworn, depose and say and each for himself says that he resides in the southern district of New York; that he is worth the sum of sixty thousand dollars over and above all his just debts and liabilities.

F. ALEXANDRE.
JNO. E. ALEXANDRE.
J. J. ALEXANDRE.
J. H. ALEXANDRE.

Sworn to this 17th day of May, A. D. 1886, before me—

JAMES P. CAMPBELL,
[SEAL.] *Notary Public* (129), *New York County.*

This bond approved as to form and amount of sufficiency of surety.

Dated New York, May 17th, 1886.

GEORGE A. BLACK,
Libellants' Proctor.

68 U. S. Circuit Court, Southern District of New York.

JOHN MACHAN *et al.*
against
THE STEAMSHIP CITY OF NEW YORK, &c.; FRANCIS ALEXANDRE, *et al.*, Claimants and Appellants.

Bill of Exceptions.

The pleadings in the above cause were as follows:

The libel in the district court, verified July 3, 1879.
The answer " " " October 30, 1879.
The amended libel in the circuit court, verified December 6, 1886.
The exceptions to the same.
The second amended libel, verified February 12, 1887.
The answer thereto, verified February 26, 1887.

They are hereto prefixed as part of the record, as are also the interlocutory and final decrees in the district court, the opinions of the district judge, the notices of appeal, and the appeals of both parties.

The trial of the appeal in this cause came on to be heard before Hon. W. J. Wallace, circuit judge, on the 25th and 26th days of October, 1887.

The libellants, to sustain the issues upon their part, read from the apostles herein the following evidence, taken in the district court:

69 Libellants read the following stipulation of the claimants:

We hereby consent that the allegations of the libel as to the owners of the bark "Helen" shall be for the purposes of this suit admitted.

Libellants read in evidence from the weather reports of the U. S. Signal Service as follows:

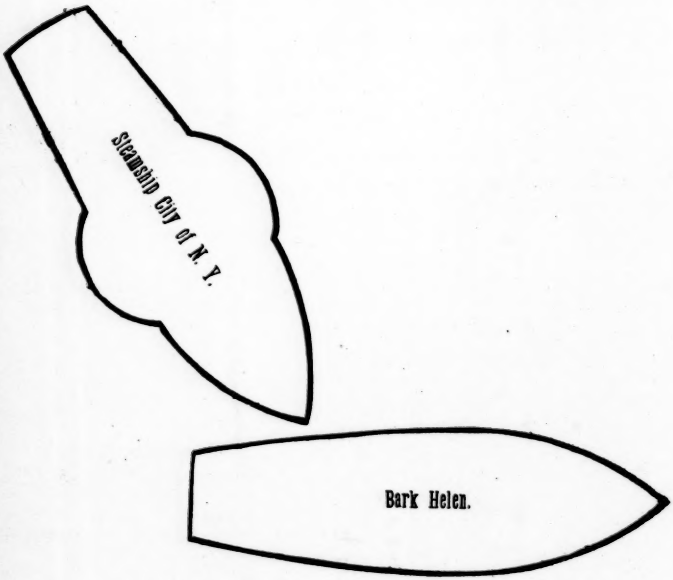
Station: Atlantic City, New Jersey.
Date: June 28th, 1879.

	4.35 p. m., Washington.	9 p. m., local.	11 p. m., Washington.
Wind:			
Direction (from) and velocity	S. W.	S. Ws.	S. Ws.
Miles per hour (self-register)	24	13	16
Clouds:			
Kind	Cirrus.	0	0
Upper amount in 4ths	1		
Direction (from) and velocity	W.		
Kind	Haze.	Haze.	Fog.
Lower amount in 4ths:			
Direction (from) and velocity	0	0	0
Character of weather	Clear.	Clear.	Clear.
Ocean swell	Light.	Light.	Light.
From	S. E.	S. E.	S. E.

Maximum velocity of wind since 11.11 p. m., 11; since 7.46 a. m., 24; since 4.46 p. m., 24.

Diagram No. 1.
Deposition of John Brown.

No. 386.
Alexandri et al. } p 71
" Machan et al.



Deposition of John Brown, Taken by Stipulation this 7th Day of July, 1879.

Present: H. J. Scudder and George A. Black, for libellants; A. O. Salter and R. D. Benedict, for claimants.

Being duly sworn and examined by proctor for libellants, he testified:

My name is John Brown; I am 32 years of age; I am a sailor, and have been for nine years; I am a native of Finland; I
70 was last on the bark Helen; she was a British vessel; her captain was Captain Barclay. Mr. Taylor was first mate. The bark was run down by the City of New York. I was in mate's watch the night of the running down. I was lookout from 8 to 10, forward, on the topgallant forecastle. I went to the wheel at 10 o'clock. I relieved Jacob. He was drowned. He gave me east by north one-half north as the course to steer. I steered that course all the time up to the collision. The lights were burning good. The wind was on the starboard quarter. We were sailing free. I can't exactly say the direction of the wind. It was about 3 knots. When I went to the wheel it commenced to get foggy and it kept foggy till the time of the collision. After I went to the wheel I could see lights on shore. I saw a light at 10 o'clock. I can't say if I saw any after that. I could not see so long as the vessel when the steamer struck because of the fog. It had been as thick as that for some time—as long as half an hour. The man I relieved at the wheel took my place on lookout and was on lookout at the time of the collision. He is drowned. A fog-horn was used on the bark that night every minute. Each of the two men on the lookout blew it. I heard a steam-whistle while I was at the wheel. I did not hear it more than once. The fog-horn on the bark was blown after I heard the whistle. At the time I heard the whistle I could not see the vessel from which it came. It was not very long after I heard the whistle that I saw the steamer. I can't exactly say how long. It was a very short time. When I saw the light the
71 mate told me to luff, and before I got the wheel down the steamer struck us. I did not see more than one light on the steamer. I saw the mast light. The steamer struck us — fore part of the mizzen rigging.

Q. When you put the wheel down did the bark mind her helm at that time?

A. It was about a point from course, sir. The steamer struck us on the port side. When the mate ordered me to luff I put the wheel to port.

Q. When the steamer approached you—got near to you—was she coming directly onto your broadside, or how was she coming?

A. Witness answers by placing models on paper marked diagram No. 1.

(Here follows diagram marked p. 71.)

72 The mate of the bark was on the poop when he gave me the order to luff. He had been there all the time. I don't know how far the steamship cut into the bark. I was standing at the wheel a little time after the steamer struck us, and then I began to see the vessel sink. I went aboard the steamer to save my life. The bark began to sink in three minutes. The captain and second mate, the cook, boy, and one of the lookouts were drowned; five drowned and five saved.

Cross-examined:

I have been examined about this collision before, at the consul's. What I said then was written down at the consul's. I remember being asked there about how the wind was. I remember telling in answer that the wind was about one point on the bark's starboard quarter. That was right. The mate was on the poop when Jacob went forward, when I relieved the wheel. The mate gave Jacob orders to blow the fog-horn about a couple of minutes after I took the wheel, before Jacob went forward. After I took the wheel the mate was forward once that I could see. I can't tell how long that was after I took the wheel. I saw a shore light while I was on look-out. I can't tell the name. I saw it before 8 o'clock. My watch began at 8. I was on deck before my watch began. I saw the light on the port side. I did not see it after I went to the wheel. We saw several shore lights on the port side. I saw them forward
73 of abeam. After we passed one I commenced to see the others. It was forward. I did not hear any report of the steamer. When I heard the steamer's whistle the sound came on the port side. I heard it nearly across from the mizzen rigging, a little bit on the quarter. I was standing on the starboard side of the wheel.

Q. Do you mean to say that the steamer struck you angling, as you have placed the models? Was she not angling in the other direction?

A. She was pointing forward. I looked at the compass at the time the steamer struck us. The mate told me to luff, and before I got the wheel down she struck us. The bark changed her course before the blow a point. I saw on the steamer the mast light. That was the only one. I looked to see if she had other lights. As soon as I saw the steamer coming I saw the mast light. When the whistle blew the mate was on the poop. He was walking on the port side. I can't say how far he was from the wheel. He did not lend me a hand at the wheel. When he told me to luff I took the wheel quick down. He did not tell me that as soon as I heard the whistle, but when we seen the mast light. I can't say how long it was that I saw the light after I heard the whistle; a very short time. I got on board of the steamer on the port side. After the steamer struck us she went a little bit away from us, and the head of the steamer went to starboard, and I got hold of the chains on the port side of the steamer. I was in the mizzen rigging. I can't say that I remember being asked before the consul where the steamer's whistle sounded from or if I heard the whistle. I
74 can't remember whether I said at that time that I thought

the steamer's whistle sounded on our port bow. I can't say I did not say so. I meant to tell the consul the story just as I remembered it. Everything that the consul asked me I answered it. If I told the consul that the whistle sounded on our port bow, that was right; not on the port bow, sir. It was a little on the quarter. I have talked over the matter since I was before the consul with Capt. Trask; another man, too. I don't know his name. It was not in this office. The mate was there. That was last week. I can't say what day. I did not talk with any one about the matter before I was examined at the consul's. No other change of the Helen's wheel was made except the luff that I have spoken of when I took the wheel down.

Redirect:

When the steamer struck us we had the wind on the starboard a little—about a point on the starboard quarter. I can't say how long we had had the wind on the starboard quarter or starboard side either. We did not tack ship after our lights were set. I heard the fog-horn just before the steamer's whistle was heard. The steamer was moving fast when she struck us. I told you I saw some shore lights. I could see the light-houses and the lights too. I could see them before as well as after our side lights were set.

his
JOHN x BROWN.
mark.

75 *Deposition of Giorgio Camilleri, Taken Pursuant to the Annexed Consent.*

Being duly sworn, he testified:

My name is George Camilleri. I am 22 years of age. I was born in Malta. My business was that of miner in Gibraltar.

I have worked on board of a steamboat from Gibraltar to Philadelphia and on another steamboat from Philadelphia to Havana. The first sailing vessel I was ever on board of was the bark Helen. I went on board of her at Havana as a sailor. I went on board of her when she was loaded. I stood regular watches on the voyage from Cuba. I was put in the mate's watch. I came on deck at 8 o'clock on the night of the collision.

I went up on the forecastle, me and another man, on the lookout; first with Brown, and when they changed the wheel at 10 o'clock Jacob came.

Jacob and I were on the lookout. Jacob came with me at 10 o'clock and was with me at the time the steamer struck the ship. I saw him trying to climb up on the anchor of the steamer and he fell back and went down between the steamer and bark.

While I was on lookout with Jacob from 10 o'clock I was blowing the fog-horn. I blew it three times and then gave it to Jacob to blow it. When it was not very thick fog we blew it about every minute; when the fog became dense we blew it all the time—three times me, three times the other man. We were standing upon the

topgallant forecastle, one *and* one side and the other on the other.

76 Q. What direction was the wind blowing as he was blowing?

A. I don't know, but I think it was astern—aft.

Q. Did you hear the whistle of the steamer?

A. I heard it from a distance.

The witness places the models on the paper in the way he heard the direction of the whistle from his vessel and places pencil on the paper in the direction the wind was blowing, marked diagram No. 2.

(Here follows diagram marked p. 76)

77 I heard more than one whistle, but it seemed to be another steamboat. It went like that (whistles twice). These whistles were both on the port side. As soon as the steamer finished blowing the whistle I commenced blowing my horn. When I first commenced blowing after the whistle from the steamer I thought it was far off, but afterwards found it was nearer, because they were approaching. The fog was so thick they could not see the steamer. When I saw the light I told the mate, and he went aft to the wheel and told him something—I don't know what—and then went to the cabin, and then the vessels were together.

Q. Place the models as the vessels were when the mate went to the cabin.

A. The witness does so, and it is marked diagram No. 3.

(Here follows diagram marked 77.)

78 When the steamer blew her whistle I reported it not close. The wind blew the sound of the whistle back. The mate looked like that (indicating); he could see nothing—too much fog; plenty. The mate was going aft, shouting down into the cabin, when I was going down in the forecastle to call the men—calling, Jump up.

Q. Did you see the light of the steamer?

A. Oh, too close; too much plenty fog.

Cross-examined:

Q. Show by the models how the steamer struck you.

A. Witness places them as follows: Diagram No. 4.

(Here follows diagram marked p. 78).

79 Q. Could you tell whether the wind came on the starboard quarter of the bark or the port quarter or right astern?

A. I have made a diagram.

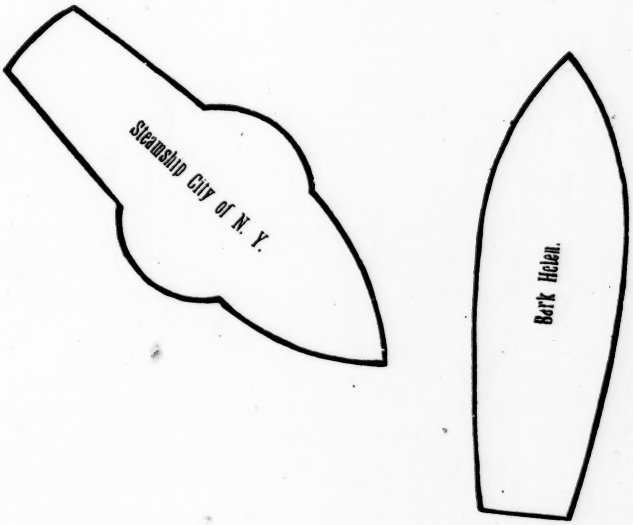
Question repeated.

A. I am not certain, but I think it came from the stern.

Question repeated.

Diagram, No. 3
Deposition of Geo. Camilleri.

No. 386.
Alexandre et al
v.
Macbean et al. } p. 77.



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Cross-examined:

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79 Q. Could you tell whether the wind came on the starboard quarter of the bark or the port quarter or right astern?

A. I have made a diagram.

Question repeated.

A. I am not certain, but I think it came from the stern.

Question repeated.

Diagram, No. 3
Deposition of Geo. Camilleri.

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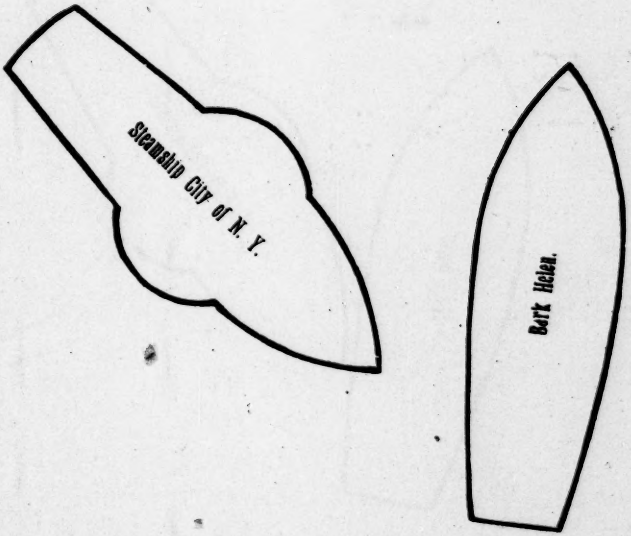

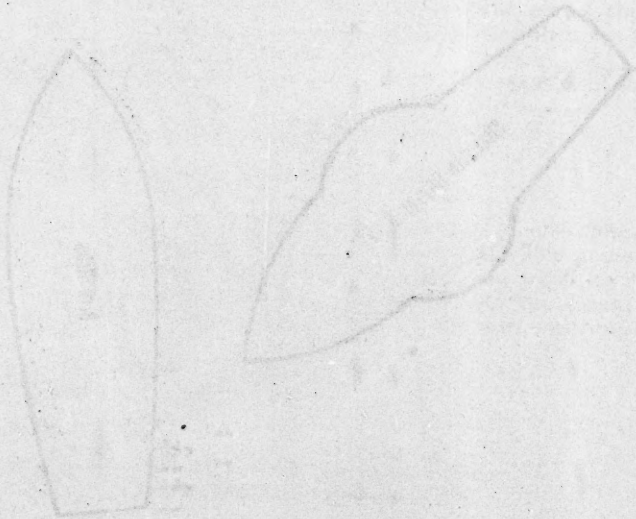

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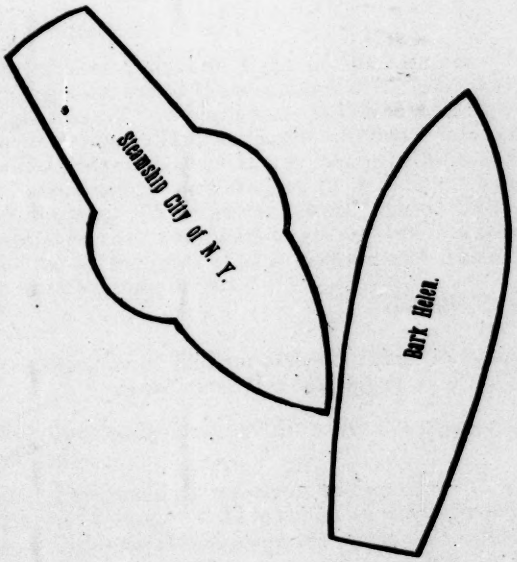
v.
Machau et al.



A. I cannot tell. My opinion is that it came from aft. I did not look at the vane. I was forward. I heard more than one whistle, but it was at a distance off and I heard two steamers. I heard more than one from the steamer that struck us. I heard it twice. The first time it was as much as I could do to hear it, because the wind carried the sound away. When I heard the faint sound the mate heard it, too, and we—I, the man, and the mate—were looking to see if we could see the light at the same time as I reported it. I saw the mate looking. He was on the poop between the main and mizzen rigging, on the port side. He came forward and told me to blow the horn again. He said the steamer was coming. Then he went aft again. He went as far aft as the side-light screen—the port-light screen—and stopped there and looked to see if he could see anything. I kept on blowing the horn after that. I and Jacob were blowing all the time. I can't tell the number, because Jacob and I were blowing all the time after the mate went aft. I could see the light on the steamer when she was very close to. I saw the two side lights. I did not see the mast-head light. Afterwards I saw only one light—the red light.

80 Redirect:

I did not see the white light of the steamer. I couldn't see it. When I got on board the steamer a man was hauling it down and the light was out. When I saw the two colored lights of the steamer I was on the topgallant forecastle. When I saw only the one light I was in the same place. It was two or three minutes between the time I saw the light and we got in collision. I couldn't tell how far off she was. She was very close. About half an hour before the steamer struck I went aft to get a drink of water and then wiped off the fog on the glass of the lantern with the sleeve of my coat. They were burning bright.

GIORGIO CAMILLERI.

81 *Deposition of William Marzan, Taken, Pursuant to the Annexed Stipulation, This 8th Day of July,* 1879.

Being duly sworn and examined by the proctor for the libellants, he testified:

I am 22 years old; a seafaring able seaman. I have been following the sea 12 years. I have sailed in sailing vessels all the time. I was on the bark Helen when she sunk, on the 28th of June, 1879. I was in the starboard watch—captain's watch. I went below at 8 o'clock. I was on deck when steamer struck me. I came on deck to pump ship about 10 o'clock. It was just as they began to blow the fog-horn. The next time I came on deck was when I heard the alarm. The alarm I heard was singing out. Two men that were on the lookout were singing out. I heard the fog-horn on the bark that night. From the time they started until the collision I could hear the horn distinctly. That was what kept me awake that night. I couldn't sleep that watch at all. When I went on deck at the time

of the alarm the weather was foggy. When I came on deck this time I saw the steamship City of New York. I had time to see it at this time. I couldn't tell where she lay, sir. I wasn't on deck but a minute. I had just time to walk from forward aft when the steamer was right into us. When I came on the main rigging she was lying with her port bow against the main rigging. She was into the bark before I came to the main rigging. It was just as much as I had time to come to the main rigging. I saw the red light of the bark when I was going to the main rigging,
82 when I was on the rail. It was in the screen then, burning bright. I saw it again just as the steamer struck. It dropped in the water. It burned for an instant in the water. From the forecastle hatch to the main rigging was 6 or 7 yards. When I heard the shouts of alarm I went on deck at once. I couldn't go much quicker. I made right for the rigging. When the steamer struck I was somewhere between the fore and main rigging on the way from forward aft.

Cross-examined:

When I heard the alarm on deck I distinguished whose voices I heard. Camilleri was the first man I heard. I could not tell any other. After I came on deck everybody was shouting.

I am an Austrian. I stopped before I came up to put on my boots. That is all.

Redirect:

I don't know as I could tell you whether I noticed which way the wind was when I went on deck to pump ship; yes; the wind was on the starboard quarter. I am sure it was on the starboard quarter. It was a light wind—3 or 4 knots. That's all.

WILLIAM MARZAN.

83 *Deposition of Jens Muller, Taken this 8th Day of July,* 1879.

Being duly sworn, he testified:

My name is Jens Muller. I was born in Denmark. I am 23 years old. I am a sailor. I have been for seven years. I am able-bodied seaman. I was in the steamer City of New York last. Before that I was in the bark Helen. I was before the mast on the Helen. I shipped in her at Hamburg, in February of this year. I was in the captain's watch. I was below at the time of the collision. I came on deck when I heard the men sing out. I heard them sing out for the ship. When I got on deck I saw some on deck and some on the poop. The steamer was close to us. I came on deck just as the steamer struck us. I did not see any light on the steamer. I never looked for that. The steamer struck us between the mizzen and main mast. I saw the bark's red light before I got on the steamer. It was burning good; it was in the screen box. I don't know about how the wind was when I came on deck.

Cross-examined:

The man on deck did not call our watch to come up. I was waked up by hearing the men sing out. I heard them. I was waked by hearing the blowing of the horn first. I was not asleep at all that watch.

JENS MOLLER.

84 *Deposition of William H. Taylor, Taken, Pursuant to the Annexed Consent, this 11th Day of July, 1879.*

Being duly sworn, he testified:

My name is William Hutcheon Taylor. I am 21 years of age. I was born at Montrose, Scotland. I have followed the sea for seven years in English ships as apprentice, third mate, second mate, and first mate. I have been first mate four months on the bark Helen. Before that I was second mate on the ship called the Edith Lorn for fifteen months. I shipped on the Helen at Cardiff, Wales, about March 3rd, 1879. She was not loaded then, and had only a part of a crew. I signed shipping articles from Cardiff to Havana and for three years. Robert Barclay was her master; he was about 49 years of age. I first knew him when I went aboard of her. He came from the same place as I did, Montrose, but I had not known him. We loaded coals at Cardiff and sailed from there on March 19, bound for Havana. The crew consisted of the captain, Barclay; the first mate (myself); the second mate or boatswain, Angus Bell; four able seamen, and two boys about 17 years old. The bark Helen is an iron vessel of 282 tons register tonnage. She was not fully loaded with coal. She had only 426 tons and could carry 440 tons. At Havana we loaded a full cargo of sugar. We sailed from Havana on June 13, 1879, bound for New York. The cook and one of the boys ran away at Havana, and we shipped in their place Camilleri and the cook. I don't know his name. The rest of the crew remained on board and sailed with us.

85 Captain Barclay, the second mate; Bell, the apprentice; Ross, who shipped in Cardiff, and the cook, who shipped in Havana, and one able seaman—Jacob Gabrielson—were lost when the bark went down. We had a breeze of wind off to the south'ard of Hatteras which gave us a slight list to starboard. From that on everything went along smoothly until the 28th of June, 1879. At a little after 9 o'clock it set in a little foggy; at 10 o'clock it was quite dense. About ten minutes to eleven the steamship City of New York ran into us. I had gone on watch, the night of the collision, at eight o'clock. In my watch were John Brown, Jacob Gabrielson, and George Camilleri. John Brown and Jacob Gabrielson were able seamen. Jacob Gabrielson was stationed at the wheel at eight o'clock, and George Camilieri was on the lookout. About half past eight I lit the side lights and standard compass light. John Brown put the side lights in the screens, which were on regulation cranes about six feet before the mizzen rigging, and I went up and put the standard compass light in its place, afterwards tell-

ing John Brown to go on lookout with Camilleri, and saw that he did so.

When I came on watch at eight o'clock our vessel was heading northeast. The wind then was about west southwest; perhaps a little southerly. We made a change in our heading about a quarter past eight. We hauled up E. by N. ½ N. The captain directed that change to be made when he was on deck. Absecon light was in sight. After giving that order the captain went below. I
86 did not see him on deck again. We had set the foretopmast-staysail, foretop-gallant-sail, both foretop-sails and foresail, maintop-gallant-staysail, main royal maintop-gallant-sail, both maintop-sails, mizzen-topmast, or middle staysail and gafftopsail; that's all. The flying jib and standing jib, maintopmast-staysail, fore royal, mainsail, mizzen-topgallant-staysail, mizzen-staysail, and mizzen were furled. When we changed our course the wind was the same as it was before. There was no alteration made in the sails when we changed our course—yes; there was. Instead of the port side being the weather side the starboard side was the weather side, if there was any weather side about it. When we got on this E. by N. ½ north course we kept it until the time of the collision. At 10 o'clock John Brown came to the wheel and Jacob Gabrielson went on the lookout with Camilleri, Camilleri being there all the time.

Q. At what time was it they commenced blowing the horn?

A. At 10 o'clock or 5 minutes past 10. The first I heard of the steamer was her whistle. I heard it, as near as I could judge, from a little before the port beam—about the port beam. Our bark at that time was heading east by north ½ north; that was the course she was steering, anyway. I took her course by the standard compass, but they were both the same at that time. The standard compass was in the fore part of the mizzen-mast, a few feet below the cross-trees. The other compass was in the skylight. There were lights in them. I could see the standard compass from the
87 deck. It was arranged to show face downward. The other compass could be seen by the man at the wheel. When I heard this whistle I did nothing, but I said something. I told them to keep blowing the horn as hard as they could and gave a look at my lights. My order was obeyed. I found our lights burning brightly. Shortly afterward I saw the steamer's mast-head light about abeam—forward of abeam a little; about abeam. I could not tell you how far off it was. I could not form no idea in the fog how far off it was. Nothing was done next on our vessel. Shortly afterwards I saw her green light. When I saw that I was on the poop. I was forward when I heard the whistle. Just when I heard the whistle I went aft, after telling them to keep blowing. While I was forward I did not see the mast-head light. When I saw the green light I had no idea how far off it was. It was pretty close, anyway—about the bark's length. I saw no other light on the steamer. After seeing the green light I went and told the captain to come on deck as fast as he could, and the rest that were below with him in the same place. I went to call the captain to the com-

panion. There is a sort of a hatch forward of the mizzen-mast. There was communication between the cabin and the place where they were. I went to the companionway in the after part of the mizzen-mast. I sang out to them to come on deck; that there was a steamboat on top of us. Then I told the man at the wheel to luff a little, which was all the same as porting. That was done. The steamer then was just on top of us, nearly—quite close to us.

88 There wasn't the least possible chance of avoiding a collision when I sang out that. Next she struck us. When she struck I was standing beside the lights, just by the place where she struck. She struck about the place where the side lights were placed—where the port light was placed. I was abreast of it. The bow of the steamer struck us. When she struck us she didn't seem to have any motion at all—a little headway, if any. The blow of the collision was enough to stagger me. It was a very short time from first hearing the whistle to the collision. I could not tell in minutes or seconds. Before I heard the whistle I heard only our own horn; when the fog commenced first I heard another vessel's horn. Our horn was blown three blasts at a time.

Cross-examined:

I was examined before the consul about the circumstances of this collision. I was under oath then. My evidence then was taken down in writing; it was read over to me after it had been taken down. I gave my evidence then as nearly correct as I could. The report of the evidence that I then gave has not been read over to me since. I have not read a copy of it here in this office nor seen a copy. I have not talked with any one about the circumstances of the collision since I was examined at the consul's. I have not talked about it with Capt. Trask since I was at the consul's. I have not talked over it with Mr. Black nor Mr. Scudder. The slight

89 list to starboard which we got before we got to Hatteras did not affect her sailing or steering. I could not tell exactly what time it was our jib and flying jib were taken in before the collision; it was between six and eight some time. I was below between six and eight, and it was taken in while I was below. I came on deck at 8 o'clock. Before the collision the wind hauled forward a little, but it came back again. It was only for a few minutes that it was forward; that was between eight and nine. It hauled forward about three points. When it hauled forward only the foreyard was changed. Shortly after the wind hauled back again the foreyard was changed back again. I had been on the coast when I was a little boy, about five years ago, in 1874. It was a little after sundown when the lights were lit. The wind was a little on our starboard quarter at the time I heard the whistle of the steamer. I am sure it was on the starboard quarter; it was not on the port quarter.

Q. Why did you say in your direct examination that the starboard side was the weather side, if there was any weather side about it?

A. Because the wind was so far aft. You must make a little dis-

tinction. The port side was not the weather side. The wind was almost directly astern. I don't know that that was the reason we had our jib furled; there may have been more reasons than one. They were not drawing, and there was no reason to have them flapping against the stays. The foreroyal was stowed because we wanted to have the ship snug. The bark had a standard compass because she is an iron ship, and there is a little deviation
90 always in an iron ship. Sometimes the compass on deck will not be accurate and sometimes it is. I don't know what makes it accurate sometimes when it is not so at other times. In the English channel there was two points difference between the standard compass and the steering compass—that is, on easterly courses; off this coast they were equally alike. I compared them myself. I know the difference between the deviation of the compass and the variation of it. I forget what the variation of the compass was where the collision took place. I think it was somewhere between a point and a half a point, and I will not be sure whether it was easterly or westerly.

Q. You have testified to-day that the wind was west-southwest, perhaps a little southerly. Why did you say, when you were examined before the consul, that the wind was south-southwest or a little south of that?

A. I beg your pardon. That was a mistake which I corrected afterward. It was not I that answered south-southwest; it was a mistake in their putting it down. When they read over the statement to me I checked them for it. I did not ask to have that corrected at that time, but they did correct it without my asking them at all. I know they corrected it because I saw them writing; saw him put his pen through it; I saw him scratch out south-southwest. I don't know the gentleman's name. There was no other correction made, to my knowledge. I said on that examination that before the captain changed the course we were steering northeast. I did not say that at that time we were on our starboard tack, with the
91 wind a little on our starboard quarter; I said nothing of the sort. There was a deviation card on board of the Helen. I never looked at it in my life; I only saw it. The mizzen cross-trees were not of iron; none of the cross-trees were.

I know that it was Absecon light that I saw just after 8 o'clock because I saw Great Egg Harbor light before that. I don't know when I saw Great Egg Harbor light. I was below when it was seen first. The captain came below to have a look at his chart and told me that was Great Egg Harbor light. That was between 6 and 7—about 7 o'clock, I suppose. The captain did not say how that light had been made. He said nothing more to me than what I have told you. I could not say whether the captain had ever been on the coast before. I think he had—yes; he was on the coast before once. I saw Great Egg Harbor light when I came on deck. I don't know how it bore. I think it was on the port quarter.

Immediately after I came on deck I went up in the mizzen cross-trees and reported a light forward of the port beam. I don't know how that was bearing; I only know what the captain told me. It

bore north-northeast, I think he said, if I remember right. When I was in the cross-trees the captain was on deck. He could see the light from the deck before he went below. He could not see it from the deck when I reported it. He went below 4 or 5 minutes after I reported it. When I went to take the bearings of it he told
92 me, Never mind. He told me to take the bearings of it before I lost sight of it. When I went to take the bearings of it I lost sight of it. It shut in hazy a little so I could not see it. It was clear when the captain saw it. I was in the mizzen cross-trees about 3 minutes. When I came down I did not go up again. The captain went below immediately after I came down. He told me it was Absecon light when I reported it. He said, That is just Absecon light. That was the time he told me never to mind. Before I lost sight of it altogether he wanted me to take the bearings of it. When I came down on deck I was going to take the bearings of it. He told me never to mind until the time I was beginning to lose sight of it. I could then see it from the deck. I fetched it down with me. I saw it when I was in the cross-trees and I kept my eye on it as I came down to the deck and could see it then. I then pointed it out to the captain. He could not see it when I pointed it out first. When he saw it he said it bore N. N. E. I still stood in the rigging when he told me that. I was not on deck. He saw it before I came down on the deck. Our course at that time was N. E., when I saw the light. I could not tell how long we had been on that course. It was when the captain was coming down to look at his charts that he told me he had made Great Egg Harbor light. He had two charts. One of them was Mercator's. That was the one he used to use. I have been with the captain at 12 o'clock, when the captain was pricking her off. I never looked at the position of the light-houses
93 on the Jersey coast on that chart. The captain did not say anything to me about the distance of the light that I took for Absecon. I knew at that time how far off it could be without his telling me, because it was marked in red ink at the side of the chart. I could not repeat the number of times it revolved or flashed, but I think it was marked 12 miles as the distance it could be seen. There was a whole lot of them marked in red ink on the chart. This red ink was writing. It had been done by the master that was in her before. I thought that the light I saw from the cross-trees was Absecon light, because the captain told me. When you asked me before how I knew it was Absecon light I said that it was because I had seen Great Egg Harbor light before, because the captain told me before that there was Great Egg harbor.

Q. Now, don't you know that there is no such light as Great Egg Harbor light?

A. The captain told me that was Great Egg Harbor light. That is all I know about it.

The captain went below about 7 minutes after 8 or thereabouts. I did not look at the time. I forget now whether when we changed the course he came on deck or sung out to me at a quarter past eight.

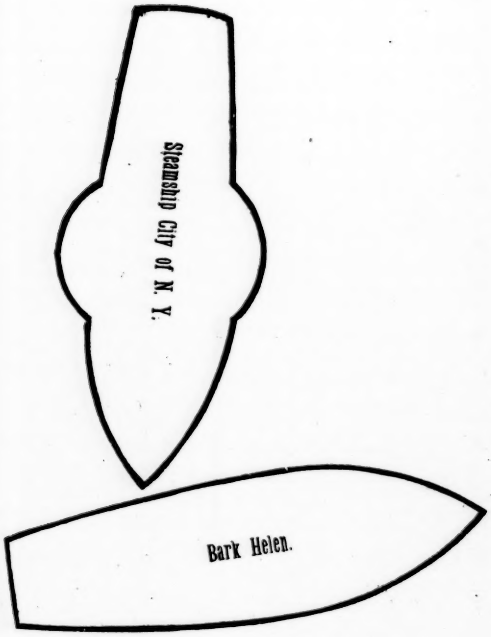
When he gave the order to change the course I gave the yards a cant the other way. That is all. I told Gabrielsen, the man then at the wheel, what course to steer. After that, before the collision, I let the foreyard go forward, as I told you before, about a quarter of an hour after the order to change our course. When I
94 say I let the foreyard go forward I mean the starboard side went forward and the port side aft. I pulled the port braces. The bark was going about three or three knots and a half. When I use the expression of "hauling up" my vessel I mean making her head nearer the wind. Gabrielson was on the forecastle head when I gave him the horn. I did not say when I was examined before the consul that he was at the wheel. I don't remember what I did say about that. I said something to him when he was at the wheel about the horn. In fact, he may have had it in his hand, for all that I remember. I took it forward to him, though. I told him the same thing when I gave him the horn that I did when he was at the wheel. I told him to blow three blasts about every minute and a half. That was all. I showed him how. I made three blasts myself, so he might understand it properly, as he was a foreigner and did not understand much English. When he was at the wheel I told him about the horn. Then I went forward with it myself, and waited there for him till he was relieved from the wheel, and then told him the same thing over again, so he would make no mistake, and blew three blasts myself. I was forward at that time.

Q. Why did you direct to blow three blasts?

A. With these American fog-horns it is the regulation—three blasts running before the wind. There was a regulation pasted on a horn of the last ship I had been on, and I went by that. When I heard the steamer's whistle I was forward. I did not look at
95 our compass after I heard the whistle. I walked aft quick as far as the red light. I stayed there till the collision, unless the time that I ran to the companion to call the captain, and then I came back again. I forget whether it was before or after I saw the green light that I called the captain.

Q. Did not the bark change her course when you gave the order to luff?

A. I don't know, but I don't think she had time to alter much. I did not testify before the consul that she did change her course. I forget now how long it was from the time I heard the whistle till the collision; a very short time. Probably I might have testified before the consul that it was three minutes; I forget now. If I did so testify I do not wish to change that statement. I forget how long it was from my hearing the whistle till I saw the light. I might have said before the consul that it was three minutes; I don't know; I have almost forgotten. The only thing I have not forgotten is that I lost my clothes by it. I am expecting to recover for them in this suit. The lookout reported her mast-head light, but I saw it at the same time. When I told the man at the wheel to luff I saw her mast-head light and the green light.



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Redirect:

The steamer struck the bark at a little bit of an angle; the stern of the steamboat nearest the fore end of the bark.

Witness places the models the way they struck.

(Here follows diagram marked p. 96.)

97 Recross:

The conversation with the second mate that I have spoken of was aboard of the steamer, but where I forget. I told him in that conversation that I luffed the bark. I told him that I saw the steamer's green light. When the captain gave me the order to change our course he told me to steer E. by N. ½ N., and told me to call him at 12 o'clock, and said he would haul her up to the northward at daylight.

I do not know what is the course for a vessel to sail when Barnegat light is in sight if she is bound for New York and has a fair wind. I do not know what is her course if she is south of Absecon, bound for New York, with a fair wind. I did not hear the captain say at any time how far off shore the bark was. The captain took a cast of the lead, but it was before I came on deck. He told me he did just when I came on deck at 8 o'clock, and then he told me to go aloft and look to see if I could see any light. I forget whether he told me the result of the cast or not; if he did I have forgotten it. The whistle of the steamer seemed as if it was about abeam.

Q. Do you mean that it sounded aft of you yourself?

A. I don't understand you. Do you mean me personally or the bark?

Q. You personally.

A. Oh, I understand you. It seemed as if it was a little abaft me. I slewed round a bit when I heard it. After I got slewed round it was over. I did not hear any whistle as if from another
98 steamer. I did not see the head-light before I got aft.

Redirect:

When I saw the steamer's head-light it bore about the same direction as the sound. It seemed to be coming square onto us.

Recross-examined:

I never took an azimuth while I was in her. We saw the land to the northward of Cape May. I was below from 12 to 3. I saw the land when I came on deck at 3 o'clock, and it was in sight from that time till dark. The bark was going a little faster from 3 to 6 than she went after 8.

The light I saw from the cross-trees was not a fixed light. I told the captain it was not a fixed light. I told him there was a light a little before the port beam. I think he told me it was Absecon light. At that time the light that I have spoken of as Great Egg Harbor light was visible. If I saw a light two points on our port bow, I would not report it as a little before the port beam. I would

report it on the port bow. If our vessel was heading N. E. and the light bore N. N. E., that would be two points on the port bow, but she might have been a little off her course at the time I reported it. I don't know how the light I call Great Egg Harbor light bore. It was aft, I know, but how it bore I don't know. I forget whether
99 I saw that light from the cross-trees or not. I know I saw it from on deck. I forget what kind of a light was the one I call Great Egg Harbor light. I can't tell whether it was fixed or not, because I did not take so much notice of it as of the other.

WILLIAM H. TAYLOR.

The libellants rested; and the claimants, to sustain the issues on their part, offered the following evidence:

100 *Deposition of Frederick Brown, a Witness for Claimants, Sworn and Examined this 8th Day of August,* 1879.

I am thirty-three years old. I was born in Germany. I have followed the sea since I was fifteen years old.

I was on the steamship "City of New York" at the time of the collision with the "Helen." I had been attached to her about ten months as seaman.

I was on the lookout at the time of the collision. I went on the lookout at ten o'clock. I stood right forward, in the eyes of the steamer. There was no one else there on the lookout but me. The weather was foggy when the accident happened—quite thick. When I went on the lookout it was quite clear. I could see the moon till about half past ten. The whistle of the steamer was blowing. I could not say exactly at about what time it did begin.

The first I seen of this bark I seen the sails of the vessel coming right down on us. I had heard nothing from her before I saw the sails. When I saw the sail she bore about a point on the starboard bow. I saw first the head sails, the sails on the foremast. I saw no other mast nor any other sail. All I saw was the foremast-sail. I reported as soon as I seen her, A sail on the starboard bow. As to how far off the sail appeared to be when I saw it I could not possibly tell, sir. When I reported the sail the officer of the watch blew the whistle three or four times in succession. Then the
101 bark answered with a horn, three or four blasts in return, and then she rounded right to. She rounded to so I could see her light then—the port-side light. I saw other sails than the sails on the foremast before the collision. I could not say exactly which sails I saw, but I saw the principal sails on the ship. The spanker I did not see set, I know. The appearance of the port side light that I saw was red. As to brightness, it was middling. It was close to when I did see it When I first saw it I could not tell how far it was. If I could give a guess, it may have been a cable's length or a cable's length and a half, more or less. I could not tell whether there was any change in the course of the steamer after I first saw the sails. I did not look after it either, for I was watching the bark. I made another report than the first one. When I seen

the bark round to I reported, "She is coming across our bow." I heard the bells struck. The bell to stop I know. That was all I know, for I haven't got nothing to do with the bells. The steamer struck the bark on the forward part of the mizzen rigging, between the mizzen and main rigging. The wind was blowing right ahead.

Cross-examined by Mr. BLACK:

I was in the starboard watch on the steamer. The second officer was in command at the time of the collision. He was in the wheel-house, alongside of the quartermaster, Baar, who was at the wheel.

I was right in the eyes of her; I judge 35 feet forward of where
102 the mate was in the wheel-house. He was about 3 feet higher than what I was. I have been in a sailing vessel. I should judge a sailing vessel would go five knots at that time with a free wind. The report I first made was a sail on the starboard bow. That is all I said. The second mate answered me that he seen it—all right, and that was all I wanted to know, to let me know that he saw it. The steamer was going to the southward. I had nothing to do with the course myself. When I reported the sail on the starboard bow I saw the sails on the foremast. I saw the foresail, the two topsails, and the topgallant-sail. The jibs were hid by the other sails. She was going right endways to me. The sheets were hauled aft. I suppose I didn't take any notice of them. The others were the biggest and the farthest to be seen.

Q. What course did you suppose the vessel was on whose foresail you saw?

A. I supposed she come to the northward and eastward. A vessel bound on that course should show to us a green light—a starboard light. I did not see any green light. When I first made the sails I judged they were a cable's length or a cable's length and a half. That is as near as I can make it, as I said before. I had them a point on the starboard bow. 160 fathoms is what I take for a cable's length. When I sung out to the second mate "She is coming across our bows," that was when she rounded to. When I made that report I saw the sails on the main and fore mast then. They

bore about ¾ or ½ a point on our starboard bow; how far off
103 I don't know. I got no answer from our second mate. I don't know that I did; he may have answered and I didn't hear him. He sounded our whistle as soon as I reported. They answered us with a fog-horn off the bark—about three or four blasts. I did not count them, and that is the reason I guessed and said about. I know they blew more than two. I don't know that I heard anything next till we were on the top of her. I say our steamer blew several whistles because I know it; I heard them. They were in quick succession.

Q. Were they different from the ordinary fog signals?

A. I don't know; it was the same whistle that blows it. I do not know what a general alarm is when blown by a steam-whistle. I don't know how many blasts of the steam-whistle were blown in the fog before this, nor whether more than one blast was blown at a time. When I saw the sails and reported them I did not think

there would be a collision; not when I reported them I didn't. The fog was quite thick. When I heard the bell to stop I was right in the eyes of her then. I know she stopped because I could see we hadn't the speed when we came up to the bark which we had when I reported her. I could tell she was going slower through the water. I saw the way the vessels lay together in collision.

Q. Place the models in the position they were in in collision.

A. I do so.

Diagram No. 6.

(Here follows diagram marked p. 104.)

105 I don't know as the steamer's engines were in motion when we struck the bark, nor whether they were or not.

When I saw the red light the bark bore from us about S. ½ W. or S. ¾ W. That is as near as I can guess—about ½ a point or ¾ of a point on the starboard bow. I can't give any bearing by compass, for I don't know what course we were heading. I don't know how far off the red light was. I saw the red light after the second report—no, it was before the second report. I reported the red light. I said, I can see her red light. She is coming across our bows. I don't know as I did get any answer. It was seeing her red light that made me think the bark had rounded to. After I saw the red light our whistle was blown again. I don't know how often. The steamer was chawed up around the bows on both sides. Her stem was twisted. I don't know to which side it was now. I took notice then, but I have forgotten.

Redirect:

I first thought there was going to be a collision when I seen the bark round to. When I saw the sails of the bark first I looked to see if I could see any light on her. There was no light visible on her then.

Q. Did you see anything else to indicate that the bark was rounding to except her showing the red light?

A. Yes, sir; I seen the space between her fore and main mast. I should say she changed about four or five points. I
106 could not tell how far away the bark was when I saw the red light. I guess about near a cable's length.

Recross:

Whether I saw the red light before or after the masts opened I could not tell.

FRED. BROWN.

107 Deposition of FREDERICK BAAR, a witness for claimants, taken this 8th of August, 1879, as follows:

I am 29 years of age. I was born in Germany. I followed the sea fifteen years. I was quartermaster on the steamer "City of New York" at the time of the collision with the bark "Helen." I had

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been attached to the steamer fifteen months. This was my first trip as quartermaster; before that I had been seaman.

My watch began that night at eight o'clock. I went to the wheel then and remained there till the collision.

When I went to the wheel the course of the steamer was south by west. The wind was about ahead that night, as much as I can judge. There was no change in the wind that I noticed after I went to the wheel.

Q. Who was in the pilot-house after you went to the wheel besides you?

A. Mr. Johnson, the second officer on watch, and Captain Deakin. The captain stayed there till ten minutes to ten. Mr. Johnson stayed there up to the time of the collision—just a moment before the collision. About fifteen minutes to ten the captain changed the course to south by west half west. Barnegat light bore then west by north. It came on to be foggy about twenty-five or twenty minutes to eleven. The whistle was blown after that about every minute. I heard the sound of a fog-horn about a point and a half or two points off our starboard bow.

Q. Did you get any order from Mr. Johnson?

108 A. I was told to starboard my helm. I put my helm to starboard, hard over. I heard a report from the lookout. I was standing on the starboard side of the wheel. Mr. Johnson was standing looking out of the forward pilot-house window, on the starboard side, forward of me. He was looking out of the forward window. The front of the pilot-house is curved. The first report I heard from the lookout was a sail on the starboard bow. I heard that just after I was told to put my helm to starboard. I had not got the wheel quite over when I heard it. Mr. Johnson answered him. He said, All right. I did not look to see the sail at that time. I did afterwards, after I was told to put my helm a-port. I looked at our compass after I put our wheel to starboard. She changed under the starboarding of the wheel three-quarters of a point, so as to head south three-quarters west. I heard a second report from the lookout. It was, "She is luffing across our bow." Then I was told to put my helm hard-a-port. Then Capt. Deaken came out into the pilot-house.

The bells were rung; one to slow, one to stop, and two for reversing. Mr. Johnson rang them when I had my helm hard-a-port. When I had my helm hard-a-port I looked out the window and saw the vessel. I saw square sails. I saw a change in them. I saw her luffing up. I knew she was luffing up because when I first commenced I could not see nothing but square sails, and gradually I

109 could see her open out her masts. When I first saw her she was on our starboard bow about two points. When I first saw her she appeared to be heading, as much as I can judge, about northeast by north. At the time of the collision she was about east by north. The steamer was heading at the time of the collision about south—southwest half west. I did look at the compass after she was into the bark. I did not look at the compass after I put our wheel to port and before the collision. She had

changed to starboard after the wheel was ported, before the collision. There was no other report from the lookout than the two I have mentioned. I did not hear any more report. His last report was, "She is luffing across our bow." I saw a red light on the bark—a red light burning very dim. I saw it when we were about into the bark. The speed of the steamer was checked before the collision. She was backing; the engine was backing. When the captain came into the pilot-house the wheel was to port. I could not tell how far distant the bark was when I first saw her sails. If the bark had not luffed, there was room for the steamer to have got by her. She would have went clear under our stern.

Cross-examined:

I had not steered the City of New York before this trip, but had one trick at the wheel in the afternoon and one in the dog watch of the same day. The City of New York steers very easy. When I took the wheel, at eight o'clock, I was told to steer south by
110 west. When I first heard the fog-horn I heard two blows. I did not hear it again. The mate heard it, too. I know he heard it, because he ordered me to put my wheel a-starboard. He used the word starboard. I put it one turn a-starboard. The two blasts of a fog-horn I heard blown meant, I believe, Starboard your wheel. I have sailed 11 years in American sailing vessels and have blown a fog-horn. I blew two blasts when I had a vessel on the starboard bow and three blasts for a vessel to clear the track. The steamer changed under the starboard wheel ¾ of a point to the southward. I steadied when the man on the lookout sung out, She is luffing across our bow. I got orders to put my helm hard-a-port. I had the wheel hard-a-starboard. I takes about four seconds to get the wheel over hard-a-starboard. The mate told me to hard-a-starboard when we heard the blasts of the fog-horn—the first one. I kept my helm hard-a-starboard till the man on the lookout gave that report. The mate told me starboard—hard-a-starboard. When he told me hard-a-starboard I was putting it over. He told me in succession starboard—hard-a-starboard. The mate next blew the whistle two blasts, about two seconds apart. That was just when the man reported. My wheel was hard-a-starboard about a minute. The next was the mate blowed the whistle again rapidly in succession three or four times. Next he got the second report from the lookout. The words of the lookout were, She is luffing across our bow. The mate then told me to put my helm hard-a-port. I did. It went over very quick, too. After I had my helm over I saw the square
111 sails on a vessel on the starboard bow bearing S. S. W. I don't know how we were heading then; I didn't look. The steamer had broken her port swing under the starboard helm when I saw these sails. She had commenced to swing to starboard then. As soon as the mate told me to put my helm to port he went to the bell and rung the bell to slow, stop, and back. The bell to stop followed the bell to slow, about four seconds apart. They could be rung quicker, but not for the engineer to understand them right.

The bell to back followed the bell to stop immediately. I felt her back. I could tell it by the shaking of the wheel—the rudder—because it commenced to shake again worse. I had got the wheel hard-a-port when the engine stopped. I kept it hard-a-port till the time of the collision. I looked at the compass after I ported—when I was told to put my wheel hard-a-port. The compass then was S. ¾ W. I did not look at it again until the collision. I looked at it when she ran into the bark. The engine, when I looked at it, was backing; the vessels were together. The compass then was S. S. W. ½ W. Captain Deaken came into the pilot-house when I had my wheel a-port. The engine then was backing. He asked me whether I had my wheel hard-a-port and I told him "yes." Capt. Deaken was not called; he came out of his room, I believe. The vessel, when he came into the pilot-house, was on the starboard bow about a point. I could not tell how far the bark was off then; I had not seen her red light then. The mate used night glasses all the night. The deckhand pulled the
112 lanyard of the steam-whistle. Mr. Johnston ordered him; I don't know exactly when. It had been blown before I heard the fog-horn, five or six times. The fog had not been in very long. When the mate gave the order to slow, stop, and back the vessel was in sight. I could then see the head sails, the sails on the foremast. I had just got my wheel over hard-a-port when Capt. Deaken came into the wheel-house. He was in the wheel-house when the mate rang the engine bells.

I don't know how far I could see in that fog. I can't judge of that. I don't know that I could see the steamer's length—yes; I could. I could see the sails that I saw plainly. I didn't see them before the second report of the lookout. His first report was, Sail on the starboard bow. I didn't notice the sail then. I didn't make no statement of this collision to anybody yet. Nobody asked me nothing about it.

Redirect:

When Capt. Deaken came into the pilot-house the engine was stopped and reversed. The bells to stop and reverse were rung when he came in. There was not much time to spare; it was all done of a sudden.

FRED. BAAR.

113 WARREN BLOXHAM, being first duly sworn, deposes and states:

I live at 106 Cole street, Jersey City. I follow the water as chief engineer; have been chief engineer of the steamer "City of New York" six years. I was on board of her at time of the collision with the bark "Helen." My watch was from 8 to 12 p. m. The only man that was in the engine-room with me was John McNeil, the oiler. Immediately before the collision I got four bells. They were struck very distinctly, remarkably so—one after the other. We were going ahead full speed; got the four bells, which means stop and back. On getting the bells I stopped and reversed the

engine immediately. The sound of the gong hadn't stopped before it was done, because it just happened that I stood just where I could lay my hand on the reversing gear, and the oiler was there, too. To stop and reverse the engine I had nothing more to do than this, to give five or six turns to a wheel, which closed the valve, and that stops the engine, and then when I shut this off we have a reversing link, and the oiler, my assistant, turns it over five or six turns as fast as he can, which reverses the engine, and then I give her steam again with the same valve that I closed. It is done quicker than you can tell it. I felt the blow of the collision very slightly. The engine was reversed before the collision. The vessel was backing. It was so much less than a minute that I can't tell. She made five or six turns back, and I should say she would would make a
114 turn a second—all of that. I got bells to stop backing after the collision. I came out on deck after the collision. The captain sent for me. When I got on deck the bark had sunk. I saw one of the officers of the bark. He told me at the time what he was, but I have forgotten. He was the first or second mate. I made a memorandum at the time, but I have lost it. The screw of the City of New York was left hand. The first signal I got prior to the collision was one bell. It was, I should think, 20 seconds—15 to 20 seconds—after that first signal till I felt the jar of the collision.

WARREN BLOXHAM.

115 JOHN MCNEIL, being first duly sworn, says:

I reside at No. 6 West street, New York city. I am an oiler and fireman. I was on board the steamer City of New York at the time of the collision with the bark Helen as oiler. I was in the engine-room at the time of the collision. It was my watch. My watch began at 8 o'clock. It was from 8 to 12 p. m. I heard the gong strike four times. It struck one, two, one two—one to slow, one to stop, and two to back. Chief Engineer Bloxham was there with me when we got those signals The chief shut the steam off, and I reversed the link. I reversed the engine when he shut the steam off. It was done less than a second after we got the signal. We were both standing right close to the reversing link. I felt the shock of the collision very slightly—not very hard. It did not seem as bad down there as it was. To the best of my knowledge, the screw made 5 or 6 revolutions back before the collision. I couldn't say how many revolutions the screw of the steamer was making before we got the bells. I don't know. It isn't my business. From the time of the first bell down to the time of the collision it wasn't over a minute. The screw had made 5 or 6 turns back before the collision—before I heard the crash. The engine was reversed before the sound was out of the bell. From the time I got the engine reversed down to the time of the collision was about 5 or 6 seconds, as near as I could judge. I can't tell how long a time it was from the time I got the bell to reverse to the time I got the next
116 bell. The next bell was to stop. I couldn't say how long it was. We were backing at the time. The chief engineer was

in the engine-room when the next bell after the order to reverse came. I have reversed the engines of the City of New York from full speed ahead to full speed astern before that time. This reversal at time of collision was done quicker than on other occasions. I think it was because we were both standing right at the link at the time.

117 *Deposition of John Deaken, Taken by Consent this 20th Day of December*, 1880.

Present: George A. Black, Esq., for libellant-, and Messrs. Benedict and Salter, for respondent-.

My name is John Deaken; am master mariner; was captain of the steamer City of New York at the time of collision with bark Helen. I had been captain of the steamer about two years from the time she was first built, and then, after an interval of two years, I was again on her for about two years. I have been a master of steamships about seventeen years, and have followed the waters, all told, about thirty years. I am nearly fifty years of age. The steamer was bound to Havana and Mexican ports. Left New York between 4 and 5 o'clock—perhaps 20 or 25 minutes past 4 o'clock—on the evening of the 27th of June, 1879—Saturday. It was 27th of June civil time and 28th June sea time; it must have been June 28th. It would take about an hour and five minutes. I should judge it was about half past five to 20 minutes of six when we passed Sandy Hook and discharged the pilot. I was on deck, on and off, until we reached Barnegat. My room was on deck. I remember very nearly when we passed Barnegat; it would be about 15 minutes to 10 o'clock. We passed it five miles west of us. The weather was clear; little hazy on the land at that time. We had been heading south by west until we got to Barnegat, and when Barnegat was a little abaft the beam we headed a little further to the westward, about south by west half west, which would be our course to
118 Body island. The wind was south. When we passed Barnegat Quartermaster Baar was in the wheel-house; no one else except myself in and out. The officer of the deck was on deck; he was there by the pilot-house. Mr. Johnson was the officer of the deck and second mate. There was a man on the lookout; his name was Fred. Brown. He was as far forward as he could get; he was forward of the windlass. From the stem of the vessel to the pilot-house was about 45 feet. About 15 minutes after we passed Barnegat I went to my room. The weather then was clear; a little haze on the land. Wind was south. The steamer was running a little over ten miles an hour from Sandy Hook to Barnegat. When I went to my room I saw that everything was in order. Then I laid down and went to sleep. My room was just abaft of the pilot-house. I was awakened by the steam-whistle and engine bells. I couldn't tell how many struck when I heard the bells. I went into the pilot-house to relieve the officer of the deck. When I got into the pilot-house the wheel was to port; the quartermaster reported it to port.

It was hard-a-port. I asked him, and he answered it was hard-a-port. I was told by the officer of the deck that the engine was backing; that he had slowed, stopped, and backed. When I came into the pilot-house I stood right by the bells that worked the engine. There are bells on both sides of the pilot-house. I went to those on the starboard side. The windows of the pilot-house are a half circle right around on the forward part, a door on each side and
119 six windows. The one I was standing by was open. I couldn't say the others were all open or all shut. I looked forward. I could see the bark standing across our bow. It was foggy then. I did not see any light on her.

Q. Could you tell how far away she was from the steamer when you came on deck that time?

A. It would be a pretty hard thing to measure that distance in the night time, when I came on deck. The steamer was pointing about between the bark's foremast and mainmast. I felt the collision slightly. At the collision the steamer was pointing between the main and mizzen mast. The steamer when she struck the bark couldn't have been going very fast. Immediately when she struck it stopped her and I stopped the engine and there she remained.

Q. Place those models so as to show the positions of the two vessels as they struck.

A. I do so as follows:

Diagram No. 7.

(Here follows diagram marked p. 119.)

120 When I came into the pilot-house I looked to see how the steamer was heading. She was heading nearly on her course, south-southwest—little to west of her course.

Cross-examined by Mr. BLACK:

The speed of the New York after passing Scotland light-ship was perhaps a little over 10 knots. We passed it to the eastward ¾ of a mile or one mile, and our course was then south for an hour or an hour and a half. About 8 o'clock we changed our course one point to the westward. We could not stop the City of New York from full speed ahead in an eighth of a mile. How much beyond an eighth of a mile I won't say—I can't. From Sandy Hook to Barnegat is roughly estimated at 40 miles. I have measured it on the chart. It is 38 to 40 miles from the bar, as near as you can get it. When I changed from S. to S. by W. Barnegat bore about W. S. W. Barnegat light was in sight when I went to my cabin. When I looked out of my door at 10 minutes past 10 and just before I lay down Barnegat then bore about W. N. W. Barnegat is visible 18 to 20 miles, according to the state of atmosphere.

I heard the fog-whistle and the bells about the same time. That was what woke me up. The whistle, I suppose, awoke me. Then I heard the bells immediately. I can't say how many whistles I heard. I didn't wait to count them. I don't remember hearing the whistle

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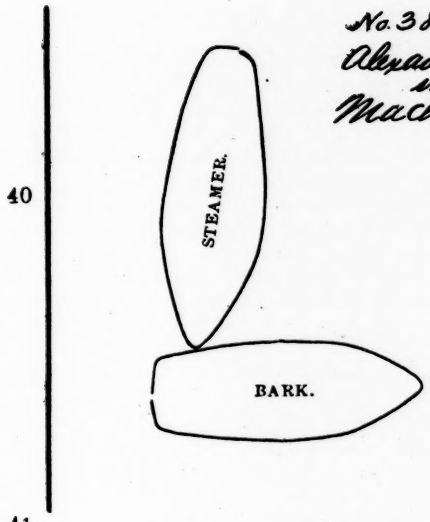

afterwards, excepting that I blew it myself. When I got into the pilot-house it was foggy. The second mate was standing
121 in the pilot-house by the bell. I asked him what was the matter. I looked out of the window as soon as I got there to relieve him. I saw, as he reported, that the bark had hauled to windward across our bows; had hauled to the eastward. I saw the bark's sails; that is all. I couldn't see the hull. I could not see the hull because it was foggy and the steamer was a little above her. I saw some of her square sails and some of her fore-and-aft sails. How far off the sails were as I saw them first is a pretty hard question to answer. It might be 40 feet and it might not be 25 feet from the ship's bow. I asked the second officer how the engine was and I asked the quartermaster how the wheel was and got answers to both questions. I first looked at our compass when I first went into the pilot-house, before the collision. I told the quartermaster to keep the wheel hard-a-port. It was hard-a-port then. Our compass, when I first looked at it, was S. S. W. nearly. I did not continue to notice the compass. I last noticed the wind at 10 o'clock. It was what we call a 6 to 8 knot breeze. I couldn't see our boats when they were off picking up the crew from the time they left the side of the steamer till they got back. The bark was a very short distance away from the steamer when she went down. I did not know our wheel had been starboarded. When we run in a fog we sometimes put four men on lookout. Always in foggy weather we put all the men we can on lookout. I had a patent log to
122 inform me what speed the steamer made. There was a record made of the reading of that patent log. I don't know where it is. I suppose it was lost when the ship was burned up. I have located the place of the collision on the chart several times. I knew where to locate the place of the collision on the chart from the time the ship had been running from Barnegat. She passed Barnegat at 9 o'clock and 40 minutes. Barnegat bore W. perhaps 9.45. From that time to the collision I gave her the rate of about 11 miles an hour. That would be her average speed with the trim she was in; nearly that. I believe the patent log was looked at after the collision. I have a slight recollection of its being reported 11½ miles from the time it was last put out. That was from 9.45 to 11.50. The steamer made 13½ knots under steam and sail; not under steam alone. The reversal of the engine before her headway was stopped has no effect on her heading. The ship will answer her helm as long as she has got headway. There is not any perceptible effect.

Redirect:

I blew the whistle after the collision. I asked the second mate what was the matter. His answer was the bark was standing across our bow. His words were that the vessel had hauled up across our bow. That is as near as I can get at it. When I asked the second officer how the engine was he said she was backing.

JOHN DEAKEN.

123 Deposition of GEORGE W. BUTLER, taken for the claimants in the above action this 4th day of January, 1881, by consent, as follows:

I live at 283 Jay street, in Brooklyn. I am 46 years old. I am a Sandy Hook pilot; have been for 23 years. I am now attached to pilot-boat No. 13, the Francis Perkins. In June, 1879, I was attached to No. 16, the Christian Berg. I remember hearing of the collision between the steamer City of New York and the bark Helen. About 4 or 5 days after the collision I was alongside of the wreck in the pilot-boat. It was between 12 and 1 o'clock. I took the bearing of the wreck from the light-house at Barnegat.

Q. In what direction did the wreck lie on the bottom?

A. She was heading E. N. E. and W. S. W., her stern bearing west-southwest.

G. W. BUTLER.

124 Deposition of ABRAHAM G. WOLF, taken this 21st January, 1881, as follows:

I live at Atlantic City, N. J. I am in my 44th year. I am light-house keeper at Atlantic City. It is called Absecon light-house, on the south side of Absecon inlet. I have been light-house keeper there since 1873 or 1874.

I keep records there. I keep records in which entries of the weather are made. There is a daily expenditure book and a journal.

I made entries in those books as to the state of the wind and the weather. On the 28th of June, 1879—I made the entries on the morning of the 29th of June for the 28th. The weather was noted on the 28th on a piece of paper which we use for a log. The entries were copied by me in a journal from this paper on the 29th. I have examined those entries, on Wednesday morning last. I am able to testify, after examination of those entries, as to the wind and weather on the 28th of June, 1879. The wind was south. The weather was clear from 7.25 p. m. to 9 p. m. and then smoky till nearly 12 p. m., and at 12 p. m. there was a dense fog. The wind during those hours was south. I made a copy of the entry in each of the two books as to the wind and weather on the 28th of June, 1879. I have it.

Q. Please produce it.

(Witness produces the copy, which is marked for identification R. D. B., January 21, 1881, and is hereto attached.)

125 Witness signs paper.

From Journal, 1879.

Saturday, June 28th, 1879, 7.26 p. m.—South, fresh, clear and cold; 9 p. m., smoky; storm signal up 1 p. m.; down 7.40 p. m.; 12 p. m., dense fog, no lights; no change in wind during the night.

From Daily Expenditure Book, 1879.

4.35 a. m., S. W., M. B., smoky; 12 m., ditto; 7.25 p. m., south, fresh, fair; 8 p. m., smoky.

A. G. WOLF.

(R. D. B., Jan. 21, 1881.)

Cross-examined:

I had no instrument to take observations with. My light was lit on June 28, 1879, at 7.26 p. m. I have reason to suppose the wind would be in a different direction at my light-house from what it was at the signal station on any day. The reason is there are buildings from 1 to 2 stories higher than the building on which the vane is. Those buildings are from west to nearly east from the signal station by the way of the south. I don't know how many years those buildings have been there from the time I came there. With the wind south at my light-house I can't tell what direction it would be at the signal station. I have never paid any particular attention to his vane; I don't go always by his vane. I know I have put the wind at south when his vane was southwest, because I knew it to be so. I don't say I do it all the time. When I put the wind
126 at southwest I don't know how the wind would be at the signal station. I don't look at his vane much; I have two good vanes that I watch, and the best test is my tower. The means used to ascertain the direction of the wind in the night time were several. I get the direction—location—by getting in the direction of the wind. What I wish to say is I find how the wind is blowing and then see what the direction is. I get right in the eye of the wind, and then I know exactly what that direction is by the lightning-rod on the tower and the ventilators, and the door and the window, which tell me the points of the compass. The tower is round, with galleries outside. The last personal observation I made on the 28th of June, 1879, was about 8.30 p. m.

Redirect:

The tower is about 700 feet from high-water mark on the beach of the coast. The line of the beach is irregular, but it generally looks north and south.

Q. How can you tell, when you are at your tower, that you are in the eye of the wind?

A. When I am on the outside of the tower, directly in the eye of the wind, I feel no wind, while if I step to one side or the other I feel it. It may be blowing a gale and I would not feel it.

A. G. WOLF.

127 Deposition of GEORGE M. WALKER, taken for the claimants herein this 24th of January, 1881, as follows:

I live at No. 251 13th street, South Brooklyn. I am 54 years old. I am a master mariner. I have followed the sea all my life and have been master since 1863. I have been master of steamships off

and on since 1863. I am master of the steamship Old Dominion and have been master of her a little over 8 years. She has been running from New York to Norfolk, City Point, and Richmond.

I remember the Old Dominion's leaving New York on the 28th of June, 1879, bound for Norfolk. We left New York at 3.40 or 3.50 p. m. I was on deck during the evening. I was on deck and in the pilot-house from the time we left the deck till we got to the Highlands—about 5.40 or 5.50—and then I went down and got my supper. After supper I was knocked around the deck, from the deck to the pilot-house, and from the pilot-house to the deck. I was in the pilot-house when abreast of Barnegat. That was 9.50 p. m. From that time on I was constantly in the pilot-house till the fog ceased. The fog came on about 10.20. I don't remember when it ceased without looking in my log book. (Witness looks in the log book and says it ceased at 12.45.) I made the entries in that log book myself on the next day—the 29th. The wind that evening was south—from the south—a good, strong breeze. It stopped our ship, I suppose, a mile and a half an hour at least.

128 Redirect:

The entries in my log book are now just the same as when I wrote them.

(Copy of entries in log book marked G. A. B., January 24, 1881, is attached.)

GEORGE M. WALKER.

G. A. B., Jan'y 24, 1881.

(*Extract from Log Book of Steamship "Old Dominion."*)

From N. Y. towards N., Ct. Point, and Richmond.

SATURDAY, 28 *June*, 1879.

At 6 h. a. m., cargo all out.

At 6 h. 30, hauled down to loading berth and commenced putting cargo on board; wind light from S. W.

3 h. 40 p. m., left New York.

12.7 aft, 11.5 forw.

	Fresh breeze from the south.			
	3.50	"	"	Battery.
	4.30	"	"	Staten island.
	5.10	"	"	Sandy Hook,
	5.35	"	"	Light-ship.
S. ½ E. 5 h. 53	5.53	"	"	Highlands.
S. ¼ E. 6.30	Strong breeze from the south.			
S. by W. 10.15	9.50, Barnegat, strong breeze from the south.			
S. by W. ¾ W. 12.00	At 10.20 thick fog, light rain; going along in 10 fathoms.			
	Strong breeze from the south.			

129 *Deposition of Walter B. Sherwood, Taken January* 31, 1881, *for Claimants.*

I was first officer of the City of New York at the time of the collision with the Helen. Near 8 o'clock I went below and turned in. I was waked up by hearing the whistle blow. I heard it blow four or five times before I got up; might have been more. What started me to get up was hearing somebody cry out. I could not distinguish what was said. I immediately got up and began to dress myself. I did not get dressed altogether before the collision. When the blow came I got out of my room and ran forward. When I got there I found she had come in contact with a vessel. At the moment I could not tell what kind of a vessel it was, as I came out of the light and on account of the thick fog; then I saw we had gone in between the mainmast and mizzen-mast of a bark.

Cross-examined:

The bark was right under our bows when I got forward. You couldn't see the whole length of her on account of the fog. The New York had been running from New York 11 or 12 knots till I went below. Under steam alone her full speed was 12 knots.

W. B. SHERWOOD.

Counsel for claimants offer in evidence the Barnegat and Cape May weather reports, which are objected to and received.

130 Station: Barnegat, New Jersey.
Date: June 28th, 1879.

	4.35 p. m., Washington.	9. p. m., local.	11 p. m., Washington.
Wind:			
Direction (from) and character	Ss.	Ss.	Sv.
Miles per hour (self-register)	28	24	14
Clouds:			
Kind	Cirrus.	Cirrus.	
Upper amount in 4ths	3	1	Hidden.
Direction (from) and velocity:			
Kind	Haze.	Haze.	Fog.
Lower amount in 4ths:			
Direction (from) and velocity	0	0	0
Character of weather	Fair.	Clear.	Foggy.
Ocean swell	Short.	Short.	Short.
From	S. E.	S. E.	S. E.

Maximum velocity of wind since 11.12 p. m., 16; since 7.47 a. m., 28; since 4.47 p. m., 27.

Station: Cape May, New Jersey.
Date: June 28, 1879.

	4.35 p. m., Washington.	9 p. m., local.	11 p. m., Washington.
Wind:			
Direction (from) and character	Ss.	Ss.	Ss.
Miles per hour (self-register)	39	25	22
Clouds:			
Kind	Cir. strat.	0	0
Upper amount in 4ths	0–1		
Direction (from) and velocity	c.		
Kind	Haze.	0	0
Lower amount in 4ths:			
Direction (from) and velocity			
Character of weather	Clear.	Clear.	Clear.

131 ANTON JOHNSON, being duly sworn and examined as a witness for the claimants, testifies:

By Mr. BENEDICT:

I am a seaman; thirty-four years old. I have followed the sea seventeen years. I was born in Germany. I have been second officer about five years, and have also been first officer. I have been four voyages as mate. I was on the steamship "City of New York" at the time of this collision. I had been attached to her at that time four years. I was a second officer. I came on watch at six o'clock and was on watch from that time until the collision.

The New York passed Scotland light-ship about ¾ of a mile to the eastward, and then took a course of south and run on that course nearly to Long Branch; then took a course of S. by W. We passed Barnegat between 5 or 6 miles off. The course of the steamer at Barnegat was south by west. It was changed ten minutes after we passed Barnegat to south by west three-quarters west by the steerage compass. Capt. Deaken changed it. I was out on deck. I went into the pilot-house after the captain told me what the course was and to look out for the ship; that was about five minutes to ten. The course had been changed to south by west three-quarters west then. The captain left the deck at five minutes to ten. From that time I was in charge. My position was in the pilot-house or anywhere forward of the pilot-house. The weather at the
132 time was clear, fine; the night was clear, fine; there was a moon; the wind was south or nearly so. I should say a sailing ship ought to go between five and six knots. The rate of speed of the steamer was about ten knots; perhaps a little over. Nothing particularly happened until the fog commenced to set in, about nine-forty or ten-forty rather, and about ten minutes to eleven I heard a fog-horn on the starboard bow. I was in the pilot-house, at the starboard window; the window was open. This fog-horn was about a point on the starboard bow. On hearing the fog-horn

I told the man to starboard his helm, it was done, and I answered the fog-horn with a blast of the steam-whistle. I was standing, with reference to the whistle line, within a step of it. It was about a step abaft of me. After I answered with this whistle I heard a fog horn again, and the man on the lookout at the same time reported a sail on the starboard bow and I saw it at the same time. I saw the sails on the foremast and nothing else. She was apparently standing opposite to us. Next I saw that she was rounded to or was come to across our bow. What showed me that she was rounding to was I saw her opening out her mast; I saw the sails between the masts. I told the man at the wheel to port his helm, and I blowed a general alarm at the steam-whistle. I rang the engine bells to slow, stop, and reverse. I rang the engine bells with the same hand that I blew the whistle; the whistle came first. I saw what the man did when I gave the order to port the wheel. I saw him
133 porting the wheel. I did not at any time see any light on the bark. When I first saw the bark I should judge she was about an eighth of a mile away, and when I saw her begin to round to she was—I can't exactly say how far away—I suppose about a tenth part of a mile; something of that sort. There was a change in her course from the time I first saw her until the collision of about four points. At the time of the collision our steamer headed south, southwest, and quarter west. I looked at the compass. I did not notice how much she swung under the starboard helm. She swung under the port helm from about a point and a half to a point and three-quarters. I did not look at the compass, only what the quartermaster reported afterwards. When the vessels came together I suppose the steamer was going about three or four knots—three knots—but I could not judge of it. It would be very hard to judge how fast she was going; they had been checking off her speed. I felt her reversing before the collision occurred. The bark at the time I felt the reverse was about a hundred feet away. The lookout made more than one report. He reported: "Look out! she is luffing across our bow." That was the second time I have steered the City of New York. The City of New York steers easy at the rate of 10 knots or at the rate of 5 knots, but she would steer faster going 10 knots—that is, answer her helm quicker. I could see objects on the deck of our vessel from one end to the other. There was a deviation to our steering compass of about a quarter point westerly. The course that we were steering was south by
134 west three-quarters west by the steering compass. I first thought there was danger of a collision as soon as she commenced to luff across our bow. I didn't think there was danger of collision before, because if she had kept on her course she was standing almost or apparently opposite to us, and I had plenty of room to get out of her way on a starboard helm. She was about a point on the starboard bow.

Cross-examined by Mr. SCUDDER:

The fog set in that night at ten-forty. The fog came from the land. The trend of the coast from Barnegat to the southward is

about N. E. ½ N., I think. When the fog first set in upon us it was not very thick. I could see through it at first, I suppose, a mile. At the time of the collision I could see through the fog, I should not judge, over an eighth of a mile. After I heard the fog-horn on the bark and before I made the bark it could not have been a minute. When I first made the bark I made her sails. I could not then see her hull at all. I saw the bark about the time I heard the lookout cry that he had made a vessel off there. She was about a point on the starboard bow. When I first made her I saw a foresail and foretop-sail and foretop-gallant-sail, and nothing else. I made her other sails, her after sails, probably a minute or a minute and a half after that. After I first made her sails, in my judgment, before I saw the luff on her part, was between one and two minutes.

135 I had seen no other sails before those I first mentioned as making before I noticed the luff, and, in my opinion, the luff brought those sails into view. When I first made her her sails stood towards us, filled from the other side. She was going free, with the wind on the starboard quarter a little bit. I am sure of it; no doubt of that at all. I could tell the wind was on the starboard quarter by the way she headed and by the way the wind was. If I hadn't known which way the wind was I could have told by seeing her about how the wind was—by seeing her plain, though. She luffed up in that luff between three and three and a half or four points, perhaps; I could not exactly say. We were not carrying any sail on the steamer. There was two reports from our lookout, a minute or a minute and a half between the two. After I saw the bark luff and before the steamer struck her was about four minutes, I think.

Q. When you struck the bark how did you strike her? Will you be kind enough to put these models on a piece of paper and give us an idea of it?

A. About that way. The land of the Jersey coast falls off, perhaps, a little more than the edge of that paper.

The position of the models is outlined as located by the witness, and the paper is marked "Johnson's Diagram A, April 10, 1882."

(Here follows diagram marked p. 136.)

137 The diagram I have now made is as correct as I can at the moment make it from recollection, showing the relative positions of the two vessels when the collision occurred—when the first impact occurred. I think the bark was heading by the compass when I first made her, say, about northeast by north, and we were heading south by west three-quarters west by our steering compass, south by west half west by the magnetic. The bark was heading when we struck her, I judge, about east by north half north; something of that sort. When the captain came in the pilot-house he was in his night clothes. It was after the bark luffed that I pulled the whistle for the general alarm. I pulled it the minute I saw her luff. When I saw her luff I blew the whistle for the general alarm

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The position of the models is outlined as located by the witness, and the paper is marked "Johnson's Diagram A, April 10, 1882."

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It is nothing but a simple pull, the same as the bell-pull is; pull it three or four times. The moment I stopped blowing I went to the bell and rang to stop and reverse. When I blow a general alarm I blow it in blasts, short as I can, 4 or 5 in quick succession; just pull up and off. I suppose I was not over 4 seconds blowing that general alarm, and that brought the captain in. After blowing the general alarm I then passed my hand to the engine-pull and rang to slow first. I rang to stop and reverse just as quick as I could pull; just as quick as I could pull to make the engineer understand me. I tell the course of the wind on that steamer by my feelings. You cannot tell as accurately on a steamer as you can on a sailing vessel the course of the wind.

138 Going as we were that night if I slow, stop, and reverse as quickly as I did then and if our helm is to starboard, our steamer's head will be thrown to port. I am sure of that. Our screw was left-handed, I think. I think you could bring the steamer to a stop in an eighth of a mile or shorter than that—that is, to stop and reverse right off. I never experimented, but I say I think it could be done. The swell and the sea combined retarded the speed of the steamer considerably—about a knot and a half—and we were going ten knots or more. The speed of the steamer without that wind would have been 11½ knots. The wind and sea combined retarded us about a knot and a half. After hearing the fog-horn until the lookout reported the fog-horn or the bark was about a minute or a minute and a half; something of that sort. At the rate the steamer was going that night and under a starboard wheel, she will not run very far before she will change three-quarters of a point—about twice her length. Under a port helm I cannot hardly judge how far she will run before she will change one and a half points. I should say from the time the helm goes over hard, 4 or 5 lengths. The length of the steamer is 260 to 270 feet. She would make this change of ¾ of a point and 1½ points in the same distance under either helm, starboard or port. I don't see anything to prevent her going one way the same as the other.

By the COURT:

Q. Why would she be so much longer changing under a port than a starboard helm?

139 A. She had a starboard helm at that time.

By Mr. SCUDDER:

That night as she was going she had a starboard swing on her under a starboard helm. I assume that the starboard swing would be overcome in the four or five lengths.

Q. Suppose she was going as she was going, and suppose she had starboarded as you did starboard, how long would it take you when you ported to break the starboard swing and get to the westward of your original course a point and a half—what space would she run over?

A. To break from the starboard swing?

Q. Yes.

A. 5 or 6 of her lengths.

Q. That is about what you had in mind the first time?

A. Yes, sir; I gave the order to the quartermaster to starboard and then to hard-a-starboard. I don't recollect what interval of time there was between them, but it was very short. It was almost on top of each other; not as much as 5 or 6 or 10 seconds. I did not help the quartermaster at all in putting the wheel over. There was only one quartermaster; the wheel runs athwart ships; one set of spokes. The quartermaster stood on the starboard side, right alongside of me—right abaft of me.

By the COURT:

Q. By a starboard swing don't you mean a swing to starboard?

A. I mean to swing the ship off on the starboard helm, because it is making the course more to the eastward.

140 By Mr. SCUDDER:

Q. When you speak of the starboard swing which do you mean?

A. Going off to port.

Q. Starboard swing is going off to port?

A. Going off to port; yes, sir. It is the stern of the ship that swings.

By Mr. BENEDICT:

We ran into the fog as we went further down; it came nearer; blew towards us. From the time I put our helm to starboard the vessel ran about 7 or 8 lengths—6 or 7.

Recross by Mr. SCUDDER:

I am running nautical miles, 6,080 feet, calculating $\frac{1}{8}$ of a mile is 760 feet. I heard two blasts of the fog-horn, one before I blew the whistle and one afterwards—shortly afterwards. It seemed to be an answer to our whistle. Each blast from the fog-horn seemed to come from the same place, except after I blew the second alarm; then they blew the fog-horn just as fast as they could, right straight along from the same place; then I could see the bark. She bore then about a point and a half off my starboard bow. We went to port a little under the starboard helm.

By the COURT:

I first gave the order to starboard when I heard the fog-horn, before I saw the bark.

141 Captain SAMUEL F. PHILLIPS, being duly sworn, examined as a witness for the claimants, testifies:

By Mr. BENEDICT:

I am a master mariner. I have followed the sea 36 years. I have been master since 1853—29 years. My experience has been all over the Atlantic ocean; more particularly between here and

the south and the West India islands. I have been master of sailing vessels, schooners, square-rig vessels, brigs, barks, steamers, &c. I am familiar with the facts in regard to the variation and deviation of compasses on board ships. The deviation of compasses is due to local attraction on board of the ship. There would probably not be any difference in that deviation whether the ship was in the English channel or on this coast.

By Mr. SCUDDER:

Q. If you heard a fog-horn off your starboard bow in the night time, with the fog as dense as that I have described, so that you could not make a bark of the size of the Helen more than an eighth of a mile off, and you heard the fog-horn a point on your starboard bow—ahead, of course—and you were running at ten knots an hour, wouldn't you instantly ring to slow and stop?

A. It would be owing to what steamer I was in. That is a very dangerous thing to do.

Q. Why?

A. Because you lose the control of them.

Q. Were you ever on the "City of New York"?

A. No, sir; I have been on similar steamers, though. We
142 lose control because as soon as you lose your headway of course you can't govern them.

Q. Suppose you can't govern them, will you cut down another vessel as quickly?

A. Possibly.

Q. Wouldn't you hold your headway under these circumstances, because you could save your own vessel better if you came into collision?

A. Well, the best way is to avoid the collision, no matter whose vessel you sail.

Q. Do you think a vessel would have an equal chance if a steamer was going 5 miles an hour or going 10 miles?

A. There is a great deal better opportunity to keep clear going 10 miles than 5.

Q. It is a prudent way, under the circumstances, is it not, if you hear a fog-horn a point off your starboard bow, to keep your vessel on at full speed?

A. I should, and put the wheel hard-a-starboard. I would do that and take my chances. I would get away from that if I could.

Redirect by Mr. BENEDICT:

If I could see a vessel an eighth of a mile off, I think an eighth of a mile off is far enough to keep clear of them. If I heard a vessel or saw a vessel an eighth of a mile off and a point on my starboard bow, coming up the coast and I going down, there would be no difficulty in clearing her if she kept her course; there would be no difficulty in clearing them, as a general thing, at any time, if they will keep their course.

Q. Take a vessel that changes her course 4 or 5 points. If
143 she is then on your starboard bow what would you say as to that?

A. I do not know what I would say, I am sure; but that is the only trouble with sailing vessels—is that they will change their course. I am speaking now of being in a steamer. We wouldn't go near them.

Claimants then rested.

Mr. BENEDICT: If your honor please, I offer from the book the following part of the finding of the court on this very question of whether this man's statement was corrected or not: "The wind was from the south-southwest."

The same was admitted in evidence.

144 Captain GEORGE A. DEARBORN, being duly sworn and examined as witness for the libellants, testifies:

I am now a surveyor of ships for the Oriental Insurance Company. I was a shipmaster about thirty years—sail and steam. I was engaged in command of steamships about ten years.

Q. Taking the case of a steamship going at the rate of between ten and eleven knots an hour, bound down the coast, running from five to six miles off the Jersey coast, between Barnegat and Tucker's inlet, at 10 o'clock and 45 minutes at night, with a fog which had set in at 10.30 to 10.40 p. m., and assume the hearing of a fog-horn one point on her starboard bow, what, in your judgment, would be the proper thing for that steamship to do under such circumstances?

A. If it was my case I should stop the ship, slow down and stop. It would depend on how far I thought I heard this sound of a horn. If it appeared to be close to me I should stop her at once. A horn might be sounded and appear some ways off, and then it might be right under your bow, and a man could stop his ship and back out of it as soon as he could if it sounded ahead of him under his bow.

Q. Assuming that the sound appeared to be one point on his starboard bow and it turned out by subsequent events to be distant eight lengths of a steamship 260 feet long, what, under such circumstances, would you judge the proper thing to do?

A. Judged to be eight lengths of a steamship off?

Q. Yes; of a steamer which was 260 feet long.

145 A. I should have slowed her and perhaps stopped her right off, as soon as I heard it, if it sounded that near.

Cross-examined by Mr. BENEDICT:

It would depend upon the distance that I could see. If I could see the vessel half a mile off, I would not see any reason for changing my speed on that account. If I could see a vessel half a mile I could see her myself.

Q. If you in daylight should see a vessel one point on your star-

board bow and running in the opposite course to you, in what distance would you be able to clear her by starboarding your helm—that is, how far away would you have to be from her in order to clear her if you put helm hard-a-starboard, in any steamer that you have been in?

A. It would be difficult for me to tell exactly how far. I want to know how fast the vessel is going.

Q. Well, take it another way. In any steamer that you have ever been engaged in, how far would she have to run with her wheel hard-a-starboard to change your course two or three points?

A. I should think two or three lengths. If I saw a vessel at such a distance running in the opposite course to me and a point on my starboard bow, a change of two or three points in the vessel would be enough to clear her if the vessel didn't change her course.

By the COURT:

Q. Would it be necessary to change at all if she was a point to starboard?

A. That would be running rather close.

146 Q. It would depend on how far off she was a point starboard?

A. If she was running right exactly in the opposite direction.

Q. You mean running half a mile off and she was a point to starboard it would be necessary to change?

Q. That would be rather close.

By Mr. BENEDICT:

Q. Would you consider that it was necessary to stop your vessel if the approaching vessel was at such distance that you could keep her clear by changing your course?

A. If I knew that I would not stop.

By Mr. BLACK:

Q. What would you regard as moderate speed, running in a fog with a steamer whose highest speed was 12 knots an hour, where you could not see a vessel within an eighth of a mile?

A. Seven knots.

Recross by Mr. BENEDICT:

Q. In this last question you assumed, did you not, a fog so thick that you could not see a vessel an eighth of a mile? Didn't you assume in the question just aswered that the fog was so thick that you could not see a vessel an eighth of a mile?

A. No, sir.

Q. How far did you assume that you could see a vessel?

A. It depends on how foggy it is how far you can see a vessel.

Q. But you were asked with reference to a certain case

147 which was put to you and you said a certain rate of speed. I think you said 7 miles an hour.

A. Yes, sir.

Q. Now, I ask you, when you gave that 7 knots an hour whether you did not assume a fog so thick that you could not see a vessel an eighth of a mile?

A. Yes; I could not see a vessel an eighth of a mile. I assumed that.

Q. Suppose you could see a vessel an eighth of a mile, what then?

A. I probably should continue going slow.

Q. Will you say that ten miles an hour was not a moderate rate of speed in that case if you could see the vessel an eighth of a mile in a fog?

A. Seven miles an hour would be a good rate of speed.

Q. But is not ten miles an hour a good rate of speed, too?

A. It is better. If I could see a vessel far enough to get clear of her in the distance that I saw her, that would be the speed I would keep. If I thought myself safer in going along, yes; and if I could see far enough off to clear her I should consider myself safe.

By Mr. SCUDDER:

Q. If you cannot make a vessel in the fog over an eighth of a mile because of the fog, you mean then to be understood that ten miles an hour is a moderate—or what do you consider is a moderate speed?

A. If we can see a vessel in the fog a quarter of a mile?

Q. No; an eighth of a mile.

A. An eighth of a mile away in the daytime we could run——

148 Q. But in the night?

A. In the night we can see an eighth of a mile if we have not got much fog.

Q. About what do you regard as a moderate rate of speed in a steamer under these circumstances?

A. A moderate rate of speed is 7 knots.

By Mr. BENEDICT:

Q. Is not 10 miles a moderate speed?

A. 10 knots is about as fast as any ship I ever went in.

By Mr. BLACK:

Q. If you hear a fog-horn one point off your starboard bow, you being in the steamer going between 10 and 11 knots an hour, what direction would you think proper to put your wheel in order to avoid that vessel, if you did not ring to slow and stop? If you kept right on your full speed, in which direction would you put your helm or your wheel to go by that vessel?

A. A point, did you say?

Q. A point on the starboard bow.

A. I should not hardly know which way to go. I think I should have to stop and find out which way the vessel was going.

Q. You would want to know which way she was heading?

A. I would want to know which way she was headed, and she might be on the wind and she might be going with the wind free. I would want to stop and get hold of her so I could tell. After I got her on my beam I should jog along then slowly.

Libellants rest.

149 Captain EDWARD KEMBLE, being duly sworn and examined as a witness for the claimants, testifies:

By Mr. BENEDICT:

I am a mariner. I have followed the sea since 1856. I have been master since 1859, and master of steamers since 1861. My experience was from 1861 to 1865 in the navy—on this coast and on the China and Japan coasts. I have been master of vessels of 1,800 to 1,900 tons is the largest. Running at 13 knots is the best rate of speed.

Q. If you were master of a vessel and running down the coast with foggy weather, but so that you could see a vessel at the distance of one-eighth of a mile, what would you say would be a moderate rate of speed to run, the weather being moderate, with a light three or four knot breeze?

A. If you could see an eighth of a mile, I should think full speed. You could run full speed without any trouble.

Q. Would you think 10 knots an hour to be a moderate rate of speed?

A. 10 knots is a moderate rate of speed; yes, sir.

Q. If such a steamer is running at 10 knots down the coast, off just below Barnegat, on such a night as I have described, where a vessel could be seen ahead at a distance of an eighth of a mile (the weather being foggy) and a 3 or 4 knot breeze blowing from the southward or from west-southwest, supposing you hear a fog-horn at a distance greater than you could see the vessel, on a point on your starboard bow, what would be prudent navigation under those circumstances?

A. I should starboard my helm.

150 Q. As between two courses under those circumstances, of either starboarding your helm and keeping on or slowing and stopping your engine, which would be the more prudent navigation?

A. Keep on, by all means.

Cross-examination by Mr. SCUDDER:

I would keep on at full speed—10 knots. I would keep on until I saw that there was some danger. If a steam-vessel under my command was moving at the rate of 10 knots an hour, or between 10 and 11, and there was a fog so thick that I could not make a vessel over an eighth of a mile distant, I would navigate her with but one lookout, certainly, and but one man at the wheel—one man at the lookout, with the officer of the deck, would be sufficient. I am aware that the rule is that a steam-vessel in a fog shall go at moderate speed. I should consider 10 knots a moderate rate of speed for any vessel.

Q. If 10 knots is moderate speed you would make no distinction between full and moderate speed in their significance as terms until you reach some higher rate of speed?

A. A 10-knot vessel is a slow vessel, and it is a moderate rate of speed. A fast vessel is all the way from 12 to 15 and 16 knots. There are many steam-vessels running down the coast between this port and New Orleans and this port and Savannah that go at 12 knots—a great many of them.

151 GUSTAV PETERSON, being duly sworn and examined as a witness for the claimants, testifies:

By Mr. BENEDICT:

I live in Liverpool. I follow the water. I have followed the water thirty-four years. I am a shipmaster and have been about four years. I have sailed out of Liverpool about nine or ten years—master of British vessels. There are sailing directions issued in England by which British vessels are to be governed in their navigation. I have got a copy here.

Q. This is your copy, is it?

A. Yes, sir (handing counsel a pamphlet).

Mr. BENEDICT: I offer from this the sailing directions between the Delaware and New York.

Mr. SCUDDER: I object to that as incompetent.

Mr. BENEDICT: This book purports to have been published in 1879 by James Imray & Son, London.

Mr. BLACK: You don't pretend that this is official in any sense, do you?

Mr. BENEDICT: It is not an official book, so far as I know. There doesn't appear to be any official stamp or authentication on the paper. It may be, for aught I know.

Mr. Benedict read as follows:

"Running down to the Delaware from New York.—In a small ship, after passing Sandy Hook steer south or S. ¼ W., accord-
152 ing to the distance from land, in order to clear the shoals off Barnegat inlet, which extend 1 to 1½ miles from the shore, as also do the shoals from the various inlets south of it. When clear of Barnegat steer S. S. W. ¾ W. or S. S. W. ½ W., parallel to the shore, so as to make the five-fathom light-vessel. Northward of Barnegat, where the shore is bold and the bottom very irregular, there are eight or nine fathoms water near the beach, but it is better not to get into less than 13 fathoms; whilst to the southward of Barnegat a depth of nine or ten fathoms is safe until up with the five-fathom bank. In sailing along, the land may be kept in sight the whole distance. These directions reversed will answer for sailing northward. Coasters familiar with the ground run along the shore in seven to ten fathoms of water, feeling the bars of the several inlets with the lead in passing, and keeping off into ten fathoms when ap-

proaching Absecon and Great Egg inlets, in order to avoid the shoals and broken ground extending from them."

Counsel then proceeded to sum up the case, Mr. Scudder making an opening statement of the points upon which he relies.

NEW YORK, *April* 27, 1882.

Libellants' counsel asks that, although the case has been closed and partly argued, the court will permit the examination of a witness upon the condition of the bark after the injury.

Claimants' counsel not objecting, the request is granted.

153 JOHN HAGGERTY, being duly sworn and examined as a witness for the libellants, testifies:

By Mr. SCUDDER:

I am a submarine diver in the employment of Capt. Israel J. Merritt. I have been, off and on, twenty-two years in that business. In the course of twenty-two years my duty has been to descend into the ocean or water and examine vessels and take up articles from them. I know the bark "Helen," that was lost off the Jersey coast a couple of years ago—June 28, 1879. I visited her in my capacity of submarine diver on the 10th of July, 1879. I went down there the 10th of July, at 4 or 5 in the afternoon—I forget now which. I landed on her decks and I found the hole where this steamer ran into her. The hole was just beaft the main rigging and on the port side. It broke the plates in there—one plate, I believe, or two—I forget now which—from ten to twelve feet on top of the water line—not on the water line, but on the ship's water-ways—on the deck—on top of the deck.

By the COURT:

Q. It broke in these plates on a line with her deck?

A. Where the plates come out onto the deck—where they fasten into the side of the vessel on top—right under the deck, where the plates on her side comes up and laps onto the deck.

By Mr. BENEDICT:

It broke two plates there from ten to twelve feet?

154 By the COURT:

Those plates were lapped in on deck. The fracture extended into the deck about 4 or 5 feet or 6—about that, as near as I could judge. I only just looked at it. The plank was broke all in—pushed right in and broke up—and the ship's bows went into the cargo and broke the boxes of sugar inside. I went in down there and put my foot on them and took hold of the boxes. It went down ten feet about on the side of the vessel, as near as I could judge. There was an opening in the deck where this fracture had been made—that is, the planks thrown apart, away from each other. I could get down that hole, from the deck down. The mizzen-mast was

broken about the middle of it. To the best of my judgment now, the bark, as she lay on the bottom, lay headed up the beach, about northward and eastward—about north-northeast.

By the COURT:

Q. On a line parallel with the beach?
A. Yes; about north-northeast.

By Mr. SCUDDER:

Q. Did you bring up a piece of that bark?
A. No, sir; it is down in the office.
Q. But did you bring away from her any part of the plating?
A. Yes, sir.
Q. How did you remove that?
A. I took out a part of the outer plating where when the ship struck her, it smashed it in, and it was hanging and I took
155 hold of it and worked it loose and brought it up, and it is about ten inches long and about six or seven inches wide. The plated siding of the vessel for a distance of about twelve feet was jammed right in.
Q. Now, will you put two of these model boats upon a piece of paper in the angle in which that fracture extended?
A. That is about it.

The paper on which the witness places the model is marked "Haggerty's diagram, April 27, 1882," and the outlines of the two vessels are marked respectively "Helen" and "City of New York."

(Here follows diagram marked p. 155.)

156 By the COURT:

Q. Do you mean to represent the place of the contact as well as the angle of the two steamers?
A. Well, I didn't know how they laid at that time.
Q. What do you mean by that diagram?
A. Just as the hole presents to me now down there.
Q. That is what you mean to indicate by that diagram—the way you think the hole shows that the one struck the other?
A. Yes, sir.

By Mr. BENEDICT:

Q. You think this break was aft of the main rigging?
A. Yes, sir; about three to four feet aft.

Buoy Marking Wreck off N. J. Coast, F. B.

TREASURY DEPARTMENT,
OFFICE OF LIGHT-HOUSE BOARD,
WASHINGTON, *April 20th*, 1882.

GENTLEMEN: In reply to your letter of April 19th, asking as to buoy moored off New Jersey shore, south of Barnegat light-house,

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Haggerty's Diagram
April 27, 1882

and supposed to mark the wreck of the bark Helen, you are informed that the buoy in question was placed to mark a wreck, supposed to be a bark, sunk by collision with the steamer City of New York.

The position of the buoy as reported to the board August 3rd, 1879, was as follows:

Barnegat light-house N. $\frac{1}{8}$ E. (magnetic), distant $12\frac{1}{2}$ miles.

157 Tucker's Beach light-house W. S. W. $\frac{3}{4}$ W. (magnetic), distant $9\frac{1}{2}$ miles.

This position would bring it about $6\frac{1}{4}$ miles from shore. It was in 10 fathoms at low water.

Very respectfully,

GEO. DEWEY,

Commander, U. S. N., Naval Secretary.

Messrs. Scudder & Carter, No. 66 Wall St., New York city.

The libellants put in evidence also extract from the log of the schooner Ada F. Crosby:

Course.	Distance.	Diff. of lat.	Departure.	Lat. by D. R.	Lat. by ob.	Variation.	Diff. of lon.	Lon. in.	Lon. by ob.
				35° 18 N.	35° 15			74° 48	West.

H.	K.	F.	Courses.	Winds.	Leeway.	Remarks—Saturday, 28th day of June, 1879.
1	7		N. ½ E.			
2	7					
3	7			S. S. W.		
4	7					
5	7			"		
6	7		"			
7	7					
8	7					
9	7		"	"		
10	7					Throughout these 24 hours fine, pleasant weather, with a steady breeze; all possible sail set; at noon sounded in 24 fathoms of water; employed painting; pumps duly attended; sails set to the best advantage; lots of vessels in sight, bound northward.
11	7					
12	7					
1	7					
2	7					
3	7		N. ½ W.	"		
4	7					
5	7		"			
6	7					
7	7					
8	8					
9	8		"			
10	8			South.		
11	8					
12	8					

Course.	Distance.	Diff. of lat.	Departure.	Lat. by D. R.	Lat. by ob.	Variation.	Diff. of lon.	Lon. in.	Lon. by ob.
				38° 36′ N.	38° 39′	" "	" "	74° 15	West.

Journal from —— towards ——.

H.	K.	F.	Courses.	Winds.	Leeway.	Remarks—Sunday, June 29th, 1879.
1						
2						
3						
4						
5						
6						
7						Begins with pleasant weather; steady breeze from the southward.
8						
9						6 h. p. m., sighted Absecon light-house.
10						10 h., light bore west, dist. about 8 miles; set in with
11						fog and heavy mist. Midnight, heading off shore under
12						light sails. 5 h. a. m., cleared up; made sails. 9 h.
1						a. m., got pilot; made land, and proceeded up the coast;
2						passed Sandy Hook 2 h. p. m.; came to an anchor 5 h.
3						30 m. at Carrenton; furled sails; set anchor watch;
4						pumps duly attended. This day ends with 36 hours,
5						and harbor log commences.
6						
7						
8						
9						
10						
11						
12						

158 The evidence being closed, the counsel for the respective parties offered requests to find certain facts and conclusions of law as follows:

159 United States Circuit Court, Southern District of New York.

JOHN MACHAN *et al.*, Libellants and Appellants,
against
THE STEAMSHIP "CITY OF NEW YORK;" FRANCIS ALEXANDRE *et als.*, Claimants and Appellants.

Findings of Fact and Conclusions of Law Proposed by Libellants.

First. The British bark "Helen" sailed from Havana on June 11th, 1879, loaded with a cargo of sugar and bound for the port of New York, and was sunk by collision with the steamship "City of New York" on June 28, 1879, at about 10.50 p. m.

Second. The bark "Helen" was an iron vessel of 282 tons register and could carry 440 tons of cargo, and was commanded by Captain Barclay and a crew consisting of first and second mate, four seamen, and two boys. Her captain and three seamen were drowned when the vessel was sunk.

160 Third. At the time of the collision, and from about 8 o'clock p. m., the mate, Taylor, had been in command of the navigation of the vessel, the captain having gone below, and there were on the deck of the bark the mate and three seamen, one of them at the wheel and two on the lookout. The bark's lights were properly set and burning brightly.

Fourth. The bark was under foretopmast-staysail, foretop-gallant-sail, upper and lower foretopsail and foresail, maintop-gallant-staysail, mainroyal, maintop-gallant-sail, upper and lower maintopsails, mizzen-top-staysails, and mizzen-gaff-topsail; the wind was light and the weather was foggy. The fog-horn was being blown on said bark at regular and proper intervals.

Fifth. The bark being an iron vessel, her compasses were effected by that fact, and she had on board a deviation card, on which was noted the deviation of the compass caused by the iron of the vessel. She had met with a breeze of wind when off Hatteras, which had caused her cargo to shift and given the vessel a list to starboard, which list affected her compass and caused what is technically called the "heeling error." The wind appeared to those on board the bark, by her compass, to be W. S. W., and her course appeared by the same compass to be E. by N. ½ N. The true heading of the bark was N. E. ½ E., and the true direction of the wind was S. W.

Sixth. The collision occurred and the bark was sunk at a point between Barnegat and Absecon, on the New Jersey shore. From the place where the wreck lay Barnegat light bore N. ⅛ E., distant about 12½ miles, and Tucker's Beach light bore W. S. W. ¾ W., distant about 9½ miles.

161 Seventh. The steamship "City of New York" is an American wooden steamship, 242 feet long, 1,715 tons reg-

ister. She sailed from New York on Saturday, June 28th, 1879, at 4.40 p. m., on her voyage to Havana. She was off Barnegat, which bore W. from her, distant 5 miles at 9.45, and on a course of S. by W. Shortly after, when Barnegat was abeam or a little abaft of beam, the course was changed to S. by W. ½ W. About 10.40 the steamship ran into a dense fog and commenced blowing her whistle at intervals of three or four minutes. The steamship continued on the same course until the fog-horn of the bark was heard, when the course of said steamship was altered by starboarding her helm.

Eighth. The bark was going at a rate of about three miles an hour, and at about 9 p. m. a fog set in, and thereafter and down to the time of the collision the fog-horn on the bark was properly blown. About 10.45 the whistle of the steamship "City of New York" was heard on board the bark, and shortly afterwards the mast-head light of the steamer was seen. The bark continued on her course, regularly blowing her fog-horn, until the said steamship was very close to her and a collision between them seemed inevitable; then the helm of the said bark was ported, but her course was not altered more than a point thereby, when she was struck by the said steamship.

Ninth. The speed of the steamer was not reduced at any time until the red light of the bark was seen. The steamer was running at full speed in the fog, and after hearing the fog-horn of the said bark continued at full speed for some time and at the rate of about 12½ knots an hour. The said collision occurred at about 10.50 p. m., and the distance from the place where the bark was sunk to the point where Barnegat light bore W. from the steamer at
162 9.45 p. m. is 13½ knots. The steamer was not running at a moderate speed in the fog.

Tenth. There was only one lookout stationed on the steamer, and she was not slowed nor stopped and backed as soon as she might have been, nor did she avoid the collision as she would have done if she had been running at a moderate speed.

Eleventh. By the collision the bark, her cargo and freight, together with the personal effects of the officers and crew, were totally lost.

The value of the bark, her stores and pending freight, was $16,289.59.

The value of the cargo on board the said bark was the sum of $20,055.43.

The personal effects of Captain Barclay were of the value of $1,026.25.

The personal effects of the mate, W. H. Taylor, were of the value of $220.83.

The personal effects of John Brown were of the value of $100.

The personal effects of George Camilleri were of the value of $73.83.

The personal effects of William Marzan were of the value of $88.

The personal effects of Jens Moller were of the value of $55.

Twelfth. The said collision occurred wholly through the fault and negligence of those having charge of the navigation of the said steamship.

163 As conclusions of law I find:

I.

That the steamship "City of New York" was in fault in running at too high a rate of speed in a fog, and is liable therefor.

II.

That the steamship "City of New York" did not slow nor stop and back immediately on hearing the fog-horn of the said bark, and changed her course before ascertaining the position of said bark, and had not a sufficient lookout, and did not blow her whistle at proper intervals, and was in fault therefor.

III.

That the libellants are entitled to a decree against the claimants for the loss of the bark "Helen and her freight and stores for the sum of $16,289.59, with interest from the 28th of June, 1879."

For the loss of the cargo, the sum of $20,055.43, with interest from the 13th day of June, 1879.

For the loss of personal effects of Capt. Barclay, for the sum of $1,026.25, with interest from the 28th of June, 1879.

For the loss of the personal effects of William H. Taylor, for the sum of $220.83, with interest from the 28th of June, 1879.

For the loss of the personal effects of John Brown, for the sum of $100, with interest thereon from the 28th of June, 1879.

For the loss of the personal effects of George Camelleri, for the sum of $73.87, with interest thereon from 28th of June, 1879.

164 For the loss of the personal effects of William Marzan, for the sum of $88, with interest thereon from the 28th of June, 1879.

For the loss of the personal effects of Jens Moller, for the sum of $55, with interest thereon from the 28th of June, 1879, together with their costs in the district court, taxed at the sum of $538.30, and costs in this court, to be taxed.

GEO. A. BLACK,
Proctor for Libellants.

165 United States Circuit Court.

JOHN MACHAN *et al.*, Appellants,
against
THE STEAMSHIP "CITY OF NEW YORK;" FRANCIS ALEXANDRE *et al.*, Claimants, Appellants.

Findings of Fact and Conclusions of Law Proposed on Behalf of the "City of New York."

First. On the night of the collision between the bark "Helen" and the steamer "City of New York" the wind was south, and its strength was such that the bark was making about four knots an hour.

Second. The night was somewhat foggy, but it was moonlight, and a vessel's sails could be seen at a distance of something more than an eighth of a mile.

166 Third. The steamer was bound from New York to Cuba. She had a competent lookout on the forward deck, faithfully attending to his duty, and a competent quartermaster at the wheel; and her second mate, a competent navigator, was in the pilot-house in charge of her navigation, and her engine was in charge of a competent engineer.

Fourth. The steamer was a vessel of 1,715 tons measurement and 242 feet long. Her full speed under steam and sail was 13 or 14 knots. Her speed on that night, after the fog set in, was 10 knots. She had no sail set. Her propeller was what is known as a left-handed propeller—that is, when going ahead the downward blow of her propeller was on the port side of the steamer, and when backing it was on the starboard side of the steamer.

Fifth. The collision took place about 55 minutes past 10 p. m. The fog above spoken of had set in about 40 minutes past 10. After it set in the steamer's fog-whistle was properly blown.

Sixth. The place of the collision was found by the wreck of the bark and was a point off the coast of New Jersey 6¼ miles from shore, in 10 fathoms of water, from which point Barnegat light-house bore N. ½ E. (magnetic), 12½ miles distant, and Tucker's Beach light-house bore W. S. W. ¾ W., magnetic, 9½ miles distant.

Seventh. The course of the steamer at the time when the fog-horn of the bark was heard was S. by W. ½ W.

167 Eighth. The bark was coming up the coast from Cuba, bound to New York, with a cargo of sugar. She was steering the regular course for a vessel as bound in that locality and was in the usual track of vessels so bound.

The course on which she was heading was N. E. by N. ½ N. Her captain was below asleep, and her navigation was in charge of her mate. She had a seaman forward, who was blowing a fog-horn at intervals.

Ninth. The whistle of the steamer was heard by those on the bark somewhat on the port bow of the bark, and thereafter the helm of the bark was ported and her course changed, so that at the time of the collision she was heading east or east ½ north.

Tenth. The horn of the bark was heard by those on the steamer about a point on the steamer's starboard bow, and thereupon the helm of the steamer was starboarded.

Eleventh. If the bark had kept the course on which she was sailing without change, the steamer would by this starboarding of her helm have avoided the bark and there would have been no collision.

Twelfth. Immediately after the helm of the steamer was starboarded the head sails of the bark were seen a little on the starboard bow, about an eighth of a mile distant, and very speedily thereafter the change of the bark's course to the eastward under her

168 port helm was seen, by which change she swung enough to open her masts and show her red light instead of her green.

Thirteenth. From the time the horn of the bark was heard those on the steamer kept close watch of the bark, and this change of the bark's course was seen as soon as it was made, and at once the helm of the steamer was changed to hard-a-port and her engines were stopped and reversed, but there was not then time to avoid the collision by those means.

Fourteenth. Under the starboard wheel of the steamer her head had been changed about three-quarters of a point to port, and under her ported wheel and her reversed engine her head had been changed about a point and three-quarters to starboard, so that at the collision she was heading S. S. W. ½ W. The bark was then heading about E. or E. ½ N.

Fifteenth. The steamer struck the bark stem on, on the bark's port side, just aft of the main rigging, and cut in four or five feet, causing the bark to sink.

Sixteenth. At the time of the collision the speed of the steamer had been reduced to about three or four knots an hour.

Seventeenth. When the fog-horn of the bark was heard on the starboard bow, three courses were open to the steamer, viz:
169 (1st) To stop and reverse her engine, (2d) to port her wheel and keep on, or (3d) to starboard her wheel and keep on.

Eighteenth. As the engine of the steamer was a left-handed propeller, to stop and reverse it must turn the head of the steamer to the starboard—that is, towards the vessel from which the horn was heard.

Nineteenth. To port the wheel and keep on must also turn the head of the steamer towards the vessel from which the horn was heard.

Twentieth. To starboard the wheel and keep on must turn the head of the steamer away from the vessel from which the horn was heard.

Twenty-first. The second mate, in charge of the steamer, understood that the bark was a vessel bound up the coast on a course nearly opposite to that of the steamer, and he was correct in so understanding.

Twenty-second. The course which the second mate adopted, of starboarding his wheel and keeping on, was the only way to take the steamer away from the bark, and it would have been effectual to produce that result and avoid the collision if it had not been thwarted by the bark's changing her course in the same direction.

170 Twenty-third. The bark was an iron vessel; she had a standard compass as well as a deck compass, the standard compass being placed on her in order that any deviation of the deck compass might be corrected by the standard compass; those two compasses did not vary up to the time of the collision.

Twenty-fourth. There was a deviation card on board the bark, but her mate had never looked at it.

Twenty-fifth. The bark had got a slight list to starboard coming up the coast, but not enough to affect her sailing or her steering.

Twenty-sixth. The mate of the bark testified in the cause that

the bark was sailing E. by N. ½ N. when the steamer's whistle was heard, and that such had been her course from about a quarter past eight p. m. before the collision. This was untrue. Her course had been and continued N. E. by N., or nearly so, until her helm was ported, and she made no such change of her course to E. by N. ½ N. at a quarter past eight, as the mate testified, or at any other time.

Twenty-seventh. The mate of the bark was not a competent navigator.

Twenty-eighth. The change of course which the bark made after hearing the steamer's whistle was not a change *in extremis*.

171 Twenty-ninth. The sails of the bark were all set except the jib and flying-jib, maintop-mast-staysail, fore-royal, main-staysail, mizzen-topgallant-staysail, mizzen-staysail, and mizzen.

Conclusions of Law.

First. The bark was in fault for changing her course.

Second. The steamer was not in fault for going, in such a condition of the atmosphere, at the rate of speed at which she was going.

Third. The steamer was only required, under the law, to go at such a rate of speed that she could keep out of the way of the bark if the latter kept her course.

Fourth. If the bark had kept her course the measures adopted by the steamer to avoid her would have been successful. The cause of the collision, therefore, was the change of course of the bark, which thwarted those measures.

172 Fifth. It was not negligence on the part of the steamer, on hearing the fog-horn of the bark, to adopt the only one of the measures which she could adopt which would turn her away from the bark.

Sixth. Inasmuch as stopping and reversing the engine of the steamer would send her head towards the vessel from which she heard the horn on her starboard bow, she was not in fault for not then stopping and reversing her engine.

Seventh. Inasmuch as the two vessels, when the fog-horn was heard, were at such a distance that the steamer by starboarding her helm would have cleared the bark if the latter had performed her duty of keeping her course, the steamer was not then approaching the bark so as to involve risk of collision, and was not required by rule 21 to slacken her speed.

Eighth. In the position in which the vessels were when the fog-horn was heard, for the steamer to slacken her speed was to increase instead of diminish the risk of collision, and under rule 24 there were special circumstances which made it her duty to keep on under a starboard helm instead of slackening her speed.

Ninth. There was no fault in the steamer in that she stopped and backed her engine and ported her wheel as soon as the change of course of the bark was seen.

173 Tenth. There was no fault in the steamer in that her engines were not sooner stopped and reversed or her helm sooner ported.

Eleventh. The proximate cause of the collision was the bark's change of course.

Twelfth. Inasmuch as the steamer, at the rate of speed at which she was going, would have cleared the bark if the latter had not changed her course, such rate of speed was not a contributing cause of the collision.

Thirteenth. The change of course of the bark was not a change *in extremis*.

Fourteenth. There was no fault on the part of the steamer.

If the above request is refused, then

Fifteenth. There was no fault on the part of the steamer contributing to the collision.

Or if both the above requests are refused, then

Sixteenth. There was fault on the part of both vessels which contributed to the collision.

A. OLDRIN SALTER,
Proctor for Claimants.

ROBERT D. BENEDICT, *Of Counsel.*

174 The cause, having been argued by counsel for the respective parties, was submitted to the circuit judge, who, on the 26th day of June, 1888, filed findings of fact and his opinion as follows:

175 United States Circuit Court, Southern District of New York.

MACHAN *et al.*
vs.
THE STEAMSHIP "CITY OF NEW YORK" *et al.*

Findings of Fact.

I.

The British bark Helen, an iron vessel of 282 tons register, while on a voyage from Havana to New York city, loaded with sugar, was sunk by collision with the steamship City of New York June 28, 1879, about 10.50 p. m. The captain and three of the seamen of the bark were drowned when the vessel sunk.

II.

The collision took place at a point off the coast of New Jersey six and one-quarter miles from shore, in 10 fathoms of water, 12 and ½ miles from Barnegat light-house and 9½ miles from Tucker's Beach light-house.

The City of New York was a wooden steamship 242 feet long and 1,715 tons register, having a left-handed propeller, and was bound on a voyage from New York to Havana. Her full speed was about 12 knots an hour, and when going at full speed her headway could not be stopped by reversing her engines within a distance of an eighth of a mile.

176 III.

On the night in question the wind was blowing strong from the southwest or the south-southwest. About half an hour preceding the collision the night became foggy; so much so that vessels could not discover one another at a distance of one-eighth of a mile. During this time and until within about three or four minutes before the collision the vessels had been approaching each other, the course of the steamer being about S. by W. $\frac{1}{2}$ W. and the course of the bark being about N. E. The steamship was going about 11 knots an hour, which was all the speed she could make against the wind. The bark was going about 4 knots an hour, and each vessel kept her respective course until she heard the fog-signal of the other.

IV.

During the half hour preceding the collision three seamen were on the deck of the bark besides the mate, one seaman being at the wheel and two on the lookout forward, alternately blowing the fog-horn, and the bark's lights were properly set and burning. During the same time the navigation of the steamer was in charge of her second mate, her quartermaster was at the wheel, her engine was in charge of a competent engineer, she had a lookout on the forward deck, and her regulation lights were properly set and burning. The lookout on each vessel was vigilant. Each vessel observed the proper fog-signals. The steamer maintained her full speed against the wind until her engines were reversed, just before she struck the bark.

V.

177 Before either vessel discovered the other those in charge of each heard the fog-signals of the other. At about two minutes prior to the collision those in charge of the steamer first heard the fog-horn of the bark, and from the apparent direction of the sound thought she was one point off the steamer's starboard bow. Immediately upon hearing the fog-horn the mate ordered the wheel of the steamer put to starboard and hard-a-starboard. The order was promptly executed and the steamer proceeded on under full speed until those in charge discovered the sails of the bark. The steamer had run under hard-a-starboard helm at least a minute before the bark was seen. Those in charge of the steamer then discovered that the bark's course was eastward, across the steamer's bow. The steamer then sounded successive whistles of alarm, and those in charge saw the bark luffing to the starboard. Thereupon the mate immediately ordered the steamer's engines reversed and her wheel ported, and this order was promptly executed, but she was then close to the bark, probably not to exceed 150 feet, and her headway could not be stopped in time to avoid a collision, and the steamer struck the bark on the bark's port side, her stem striking just forward of the bark's mizzen rigging, with such force that she penetrated the bark a distance of five feet, and the bark sank almost instantly.

The whistle of the steamer first heard by those in charge of the bark indicated to them that the vessels were quite near to each other. They thought the steamer was approaching bearing abeam on the bark's port side. Immediately after they saw her mast-head light and then her green light, whereupon the mate told the
178 wheelsman to port the wheel, and called to those below to save themselves. The man at the wheel had hardly got the wheel over when the steamer struck the bark. During the time the steamer was running under her hard-a-starboard wheel she changed her course to the eastward three or four points, and the bark after she luffed changed her course one or two points by the time the vessels came together.

VI.

By the collision the bark, her cargo and freight, together with the personal effects of the officers and crew, were totally lost. The value of the bark, her stores and pending freight, was $16,289.59. The value of the cargo on board the said bark was the sum of $20,055.43. The personal effects of Captain Barclay were of the value of $1,026.25. The personal effects of the mate, W. H. Taylor, were of the value of $220.83. The personal effects of John Brown were of the value of $100. The personal effects of George Camilleri were of the value of $73.87. The personal effects of William Marzan were of the value of $88. The personal effects of Jens Moller were of the value of $55. The steamer also received severe injuries, the amount of damage approximating $7,000.

Conclusions of Law.

I.

The steamer was guilty of fault in violating the 21st rule, because she did not slacken her speed when she heard the fog-signals of the bark, and also because she did not go at a moderate speed
179 when in a fog, and also because she changed her course and kept on at great speed, after she heard the bark's fog-horn, before seeing her.

II.

The bark's change of course was an error *in extremis.*

III.

That the libellants are entitled to a decree against the claimants for the loss of the bark Helen and her freight and stores for the sum of $16,289.59, with interest from the 28th of June, 1879.

For the loss of the cargo, the sum of $20,055.43, with interest from the 13th day of June, 1879.

For the loss of personal effects of Captain Barclay, for the sum of $1,026.25, with interest from the 28th of June, 1879.

For the loss of the personal effects of William H. Taylor, for the sum of $220.83, with interest from the 28th of June, 1879.

For the loss of the personal effects of John Brown, for the sum of $100, with interest thereon from the 28th of June, 1879.

For the loss of the personal effects of George Camelleri, for the sum of $73.87, with interest thereon from 28th of June, 1879.

For the loss of the personal effects of William Marzan, for the sum of $88, with interest thereon from the 28th of June, 1879.

For the loss of the personal effects of Jens Moller, for the sum of $55, with interest thereon from the 28th of June, 1879. The libellants are awarded their costs in the district court and in this court, to be taxed.

180 (Endorsed:) United States circuit court, southern district of N. Y. Machan *et al. vs.* The Steamship City of New York *et al.* Findings of fact and conclusions of law. U. S. circuit court. Filed June 26th, 1888. John A. Shields, clerk.

181 United States Circuit Court, Southern District of New York.

MACHAN *et al.*
vs.
THE STEAMSHIP "CITY OF NEW YORK" *et al.*

WALLACE, *J.:*

By the decree of the district court both vessels were found in fault for the collision which is the subject of this suit, and an apportionment of the loss was decreed. Both the libellants and the claimants have appealed. Although the claimants insist that there was no fault on the part of the steamer, and that the collision was wholly the result of the fault of the bark in making a change of course at a time when otherwise the steamer would have safely avoided her, the faults on the part of the steamer are so clearly established by the evidence as to devolve upon the claimants the burden of showing that the bark was guilty of contributory fault.

The testimony of all the more important witnesses in the district court for both vessels was taken by deposition, the mate of the steamer being the only person who saw all that took place who was examined in the presence of the district judge. Some additional testimony has been taken by the parties in this court; but in
182 the view of the facts which has been reached it has not been deemed of sufficient importance to require special consideration.

The undisputed facts in the case are that the collision took place in a fog June 28, 1879, at about 11 o'clock at night, at a point about 6 and ¼ miles off the coast of New Jersey, 12 and ½ miles from Barnegat light-house, and 9 and ½ miles from Tucker's Beach light-house. The steamer struck the bark on the latter's port side, just forward of the mizzen rigging, penetrating into her side about five feet, and sinking her almost instantly. The Helen was an iron vessel of 282 tons register, 122 feet long, and was bound on a voyage from Havana to New York city, laden with a cargo of sugar. She was commanded by Captain Barclay, and her crew consisted of

first and second mate, four able seamen, and two boys. The captain and three of the crew were drowned when the vessel sunk. The captain went below about 8 o'clock in the evening, after giving directions about the course to be kept by the bark, and left her navigation in command of the mate. The seaman who was at the wheel at this time was one of those who were drowned. He remained at the wheel until about 10 o'clock, when one of the seamen then on the lookout was called to take his place, and he was sent forward to the lookout. From this time until the collision took place the mate was on deck, one seaman was at the wheel, and two seamen were on the lookout forward, alternately blowing the fog-horn. One of the seamen, who was below in the forecastle and had been kept awake by the noise of the fog-horn, got on deck as the vessel struck and was the only one of those below who was saved. The City
183 of New York was a wooden steamship, 242 feet long and 1,715 tons register. She was bound on a voyage from New York city to Havana. Her full steam speed was about 12 knots an hour and her propeller was left-handed. Her navigation at the time was in charge of her second mate, her quartermaster was at the wheel, her engine was in charge of a competent engineer, and she had a lookout stationed on the forward deck. Her course up to the time she heard the first signals of the bark, from about 10 o'clock, was about S. by W. ½ W.

The testimony indicates that both vessels observed all the regulations in regard to lights and fog-signals, and that the lookout on each was properly stationed and reasonably vigilant.

The testimony also shows that about 10 o'clock, or shortly after, a fog of such density set in that vessels could not discover one another at a distance of more than an eighth of a mile, and at intervals could not do so at a considerably shorter distance. The quartermaster of the steamer testified, in answer to the question how far he could see in the fog, that he could see the length of the steamer. The first officer of the steamer, who came on deck while the vessels were in contact, testified that he could not see the length of the bark, and the captain of the steamer testifies that after the collision he could not see the boats sent out to assist the crew of the bark from the time they left the side of the steamer until they got back.

It is not open to fair doubt that after the night became foggy the steamer maintained substantially her full rate of speed, going as she was against the wind and without sails, until her engines
184 were reversed immediately before striking the bark. The testimony denotes that the wind was blowing from the S. W., or between that point and S. S. W., and that the steamer kept on at a speed of 11 knots an hour. Neither is it open to fair doubt that at the speed maintained by her at the time her headway could not be stopped by reversing her engines within a distance of an eighth of a mile. When those in charge of the steamer first heard the fog-horn of the bark they assumed from the apparent direction of the sound that her bearing was about one point off the steamer's starboard bow. Immediately upon hearing the fog-horn the mate

ordered the wheel of the steamer put to starboard and hard-a-starboard. The order was promptly executed. When the bark became visible to them they discovered that her course was eastward, across the steamer's bow, and then saw her changing her direction and luffing to the starboard of her previous course. Thereupon the mate immediately ordered the steamer's engines reversed and her wheel ported. This order was promptly executed, but the steamer's headway could not be stopped in time to avoid a collision.

It is entirely clear that the steamer disregarded both of the injunctions of the 21st sailing rule. She did not slacken her speed when approaching another vessel so as to involve risk of collision, and she did not go at a moderate speed in a fog. That she was approaching another vessel so as to involve risk of collision from the time those in charge heard the first fog-signal of the bark is sufficiently manifest by their conduct in putting her wheel to starboard and hard-a-starboard instantaneously upon hearing the fog-
185 horn, and it is conceded by all her witnesses that she kept on at her full previous speed until the risk of collision became imminent if not inevitable. That she was not going at a moderate speed in a fog is conclusively established by the fact that she was maintaining such speed that she could not effectually check herself by reversing her engines so as to avoid collision within the distance at which, in the condition of the fog, another vessel could be seen.

In stating that the fog was such that vessels could not discover one another more than an eighth of a mile distant, and that the steamer was not capable, when going at substantially full speed, of stopping her headway through the water within a distance of an eighth of a mile, the most liberal opinion in favor of the steamer has been expressed which can possibly be indulged upon the evidence. As is stated by Captain Dearborn, one of the expert witnesses, when vessels can be seen in a fog at night an eighth of a mile, there is not much of a fog. The committee appointed by the British association to investigate the subject state in their report that "it appears, both from the experiments made by the committee and from other evidence, that the distance required by a screw steamer to bring herself to rest from full speed by the reversal of her screw is independent or nearly so of the power of her engines, but depends upon the size and build of the ship, and generally lies between four and six times the ship's length." The rule by which to determine whether a given rate of speed is moderate or excessive, in view of the particular circumstances of the occasion, is that such speed only is
186 moderate as will permit the steamer seasonably and effectually to avoid the collision by slackening speed or by stopping and reversing within the distance at which an approaching vessel can be seen. Besides these infractions of the positive rules of navigation, the steamer was guilty of fault by her movement to port under a hard-a-starboard wheel with unabated speed, executed when she did not know the location or course of the bark. She could not reliably locate the bearing of the bark by a single signal of the bark's fog-horn. So delusive is the apparent direction of sounds amid banks of fog in locating the true source that successive observations

are commonly resorted to for greater certainty, and even then such are the aber-ations that mistake is not infrequent. She could only conjecture the course of the bark and could not know whether the bark was approaching or was proceeding in the same direction with herself, or whether she was running free or beating to windward on the starboard tack. Under such circumstances she had no right to act upon conjecture; her duty was to reduce her speed to the lowest rate compatible with her efficient control, and proceed circumspectly until she could locate the bark and ascertain her course or until further signals indicated that the bark was beyond the range of risk. The Northern Indiana, 3 Blatchf., 92; The Hammonia, 4 Ben., 515; affirmed, 11 Blatchf., 413; The Perth, 3 Hag., 414; The James Watt, 2 W. Rob., 270.

When such faults on the part of a steamship are shown, her owners are *prima facie* responsible for the collision, and must exonerate themselves by satisfactory proof that the sailing vessel was also
187 guilty of misconduct which produced or contributed to the collision. Waring *v.* Clark, 5 How., 465; The Steamer Oregon *v.* Roccar, 18 How., 570.

The fault imputed to the bark by the claimants is the only one which could plausibly be assigned under the circumstances of the case, that she changed her course after she became visible to those who were in charge of the steamer. Inasmuch as all the witnesses agree that this took place when the vessels were in plain sight of each other, the case resolves itself into the inquiry how far the vessels were apart when this change was made. The witnesses for the bark, while they differ in the details given, agree that the fog-whistle of the steamer, when first heard by them, seemed to indicate by the direction of the sound that the steamer's bearing was abeam on the bark's port bow; that very shortly after hearing her whistle they saw the steamer's mast-head light and then her green light so near as to render collision apparently inevitable, and that then the mate of the bark told the man at the wheel to port the bark's wheel and shouted to those who were below to save themselves. The testimony of the wheelsman, the lookout, and the engineer of the steamer so strongly confirms the testimony of the witnesses for the bark, to the effect that the bark's change of course was not made until the vessels were so close together that a collision was unavoidable, that it does not seem necessary to devote any time to the attempt to ascertain what the course of the bark was previously to the
188 time this change was made. All the witnesses for the steamer agree that the bark's change of course took place under their observation, and that the steamer sounded an alarm of successive blasts of her steam-whistle and reversed her engines. The only successive blasts of the steamer's whistle which were given while the vessels were approaching each other were given at the same time when the order to reverse was given by her mate. The mate testifies that when he saw the bark opening out her masts so that he could see the sails between the masts he ordered the wheelsman to port the helm, blew a general alarm at the steam-whistle, and rang the engine bells to slow, stop, and reverse, and that he was not more

than four seconds in blowing the alarm and four more in completing the signal to reverse. The engineer testifies that the sound of the gong had not stopped when his engine was reversed; that he stood where he could lay his hand on the reversing gear, and that not more than from 15 to 20 seconds elapsed after hearing the first of the four bells of the order to slow, stop, and back before he felt the jar of the collision. The captain of the steamer was in the room abaft of the pilot-house, was awakened by the alarm whistles, and stepped instantly into the pilot-house, and he testifies that when he got there the vessels were then close together, or, giving his estimate, were about 40 feet apart. The violence of the blow given by the steamer to the bark shows that the steamer was under rapid headway when she struck the bark. According to the testimony of the steamer's lookout, the bark did not change her course until after the alarm blasts of the steamer's whistle were sounded, and
189 the steamer's wheelsman corroborates the testimony of the lookout in this respect. The mate of the steamer is the only witness for the claimants who states that the bark changed her course before the alarm was sounded. The helmsman of the bark testifies that he had not got her wheel fairly over in executing the order to port the helm when the steamer struck the bark.

It is insisted for the claimant- that the bark changed her course four or five points to the starboard. Doubtless if this were true such a change could not have been made when the vessels were within 200 or 300 feet of each other. If it could be demonstrated that at the time of the collision the bark was headed about east and that her course previous to the change was N. E. the argument for the steamer would be convincing; but this cannot be demonstrated unless the testimony of the helmsman of the steamer, who gives the course on which the steamer was headed when the bark's change of course took place and also when the collision took place, is accepted as correct. It is highly improbable that in the excitement and confusion of the moment the helmsman of the steamer looked at his compass so carefully as to accurately note the steamer's course when he was ordered to put his wheel hard-a-port and again when the collision took place. Equally improbable is his testimony that while the steamer was under a hard starboard helm her course was only changed about three-quarters of a point, although she was running at full speed for a minute under that helm, and that while she was under her helm hard-a-port at the time she was reversing her engines her course was changed to a point and three-quarters
190 to starboard. She could not have been half a minute under the helm hard-a-port.

The general course of the bark after 8 o'clock in the evening may be assumed to have been about N. E. or N. E. $\frac{1}{2}$ N. This was the conclusion reached by the district judge upon considerations which are very convincingly stated in his opinion. It may be conceded that her mate, who is the only witness who attempts to give her course by the compass, is not entitled to any credit. The testimony of the diver of the Marine Wrecking Company, who visited the wreck a few days after the collision, shows that she was lying upon

the bottom of the ocean, headed about N. N. E., on a line parallel with the shore. This fact alone might not be enough to authorize the conclusion that she was headed N. N. E. at the time of the collision, but it is entitled to consideration as measureably supporting that theory and is more persuasive in fixing her heading approximately than are the conjectural opinions of the witnesses, formed in the excitement and confusion of the moment, who think she was headed about east. If she was headed about N. N. E. when she was struck by the steamer she did not change her course more than a point and a half under her port helm, and such a change would be consistent with the testimony respecting the proximity to the vessels when it was made, which has been adverted to.

It is not unreasonable to infer that the steamer while running a minute under her hard-a-starboard helm, thus covering a distance of four times her length, changed her course to the eastward three or four points, and that in the short distance during which
191 she was under her hard-a-port helm, with her engines reversed, she could not have been influenced materially to starboard. (See White's Naval Architecture, 630–637.) Upon this assumption, if the bark's course was changed one or two points the steamer would have struck the bark at the angle shown in the diagrams of the libellants' witness Hagerty and the claimants' witness Brown.

It may be that the mate of the steamer is correct in the statement that the bark changed her course before the sounding of the steamer's alarm whistles, and that the helmsman and lookout of the steamer are mistaken in supposing the change to have been made afterwards; but, in view of the testimony of the steamer's witnesses as to what took place after the bark became visible to them, it can hardly be doubted that half a minute must have elapsed after that time before the change of course was made. As the bark was not visible more than an eighth of a mile away, and as the vessels were approaching each other not far from the rate of 1,400 feet a minute, it is plain that they must have been very near together when the change was made, and even if a less time than a half minute elapsed, they were probably within 200 or 300 feet of each other.

For these reasons the conclusion is reached that the bark's change of course was not a fault, but, if injudicious, was made when the vessels were very near to each other, and was caused by an error of judgment on the part of the mate, committed in the excitement and alarm of the moment, when, owing to the misconduct of the steamer, the vessels were in a situation which did not permit him to deliberate. The case is, therefore, one for the application of the
192 rule which is well stated in The Carroll (8 Wall., 302): "Fault on the part of the sailing vessel at the moment preceding collision does not absolve a steamer which has suffered herself and a sailing vessel to get in such dangerous proximity as to cause inevitable alarm and confusion and collision as a consequence. The steamer, as having committed a far greater fault in allowing such proximity to be brought about, is chargeable with all the damages resulting from the collision."

(Endorsed:) United States circuit court, southern dist. of N. Y Machan *et al. vs.* The Steamship "City of New York" *et al.* Opinion. Wallace, J. U. S. circuit court. Filed June 26, 1888. John A. Shields, clerk.

193 [Endorsed:] 4.80. City of New York. Findings and opinion. Wallace, J.

194 And refused the claimants' requests to find.

The claimants thereupon filed exceptions to such findings and refusals to find as follows:

195 U. S. Circuit Court, Southern District of New York.

JOHN MACHAN *et al.*
against
THE STEAMSHIP CITY OF NEW YORK.

Exceptions.

The claimants herein except to the findings, opinion, and refusals to find of the circuit judge as follows:

First. They except to that part of the third finding of fact which finds that the wind was blowing "from the southwest or the south-southwest" because it does not find the direction in which the wind was blowing, and because the direction of the wind was neither southwest nor south-southwest, but south.

Second. They except to the part of the third finding of fact which finds that vessels could not discover one another at a distance of one-eighth of a mile.

Third. They except to that part of the third finding of fact which finds that the course of the bark was "about N. E.," instead of about N. E. by N. ½ N., and to that part which finds that the steamship was going about 11 knots an hour, which was all the speed she could make against the wind.

196 Fourth. If that part of the 5th finding of fact which says "Those in charge of the steamer then discovered that the bark's course was eastward across the steamer's bow" is to be understood that the bark's previous course of N. E. or N. E. by N. ½ N., without a change of her course, was eastward across the steamer's bow, they except to the same.

Fifth. If that part of the 5th finding which says "The steamer then sounded successive whistles of alarm and those in charge saw the bark luffing to the starboard" means that the successive whistles of alarm on the steamer were blown before those in charge of her saw the bark changing her course to her starboard, they except to to the same.

Sixth. They except to the finding that when the steamer's engines were reversed she was within "probably not to exceed 150 feet" from the bark.

Seventh. If by that part of the 5th finding of fact which says that

the bark "sank almost instantly" is meant that she sank in less than three minutes, they except to the same.

Eighth. They except to that part of the 5th finding of fact which says that "the whistle of the steamer first heard by these in charge of the bark indicated to them that the vessels were quite near to each other."

Ninth. They except to that part of the 5th finding of fact
197 which says, "They thought the steamer was approaching, bearing abeam on the bark's port side."

Tenth. They except to that part of the 5th finding of fact which says that the order to port the wheel of the bark was given after seeing the green light of the steamer.

Eleventh. They except to that part of the 5th finding of fact which says that "the man at the wheel had hardly got the wheel over when the steamer struck the bark," if by that it is meant that there had not been time to change the course of the bark four or five points.

Twelfth. They except to that part of the 5th finding of fact which says that "during the time the steamer was running under her hard-a-starboard wheel she changed her course to the eastward three or four points."

Thirteenth. They except to that part of the 5th finding of fact which says that "the bark, after she luffed, changed her course one or two points by the time the vessels came together," if by such finding is meant that she did not change more than two points.

Fourteenth. They except to each of the conclusions contained in the first conclusion of law.

Fifteenth. They except to the second conclusion of law.

Sixteenth. They except to the third conclusion of law.

198 Seventeenth. They except to that part of the opinion of the circuit judge which says: "The faults on the part of the steamer are so clearly established as to devolve upon the claimants the burden of showing that the bark was guilty of contributory fault."

Also to the following: "It is entirely clear that the steamer disregarded both of the injunctions of the 21st sailing rule."

Also to the following part: "She did not slacken her speed when approaching another vessel so as to involve risk of collision, and she did not go at a moderate speed in a fog."

Also to the following: "That she was approaching another vessel so as to involve risk of collision from the time those in charge heard the first fog-signal of the bark is sufficiently manifest by their conduct in putting her wheel to starboard and hard-a-starboard instantaneously upon hearing the fog-horn."

Also to the following: "That she was not going at a moderate speed in a fog is conclusively established by the fact that she was maintaining such speed that she could not effectually check herself by reversing her engines so as to avoid collision within the distance at which, in the condition of the fog, another vessel could be seen."

Also to the following: "The rule by which to determine whether a given rate of speed is moderate or excessive is that such speed

only is moderate as will permit the steamer seasonably and
199 effectually to avoid the collision by slackening speed or by stopping and reversing within the distance at which an approaching vessel can be seen."

Also to the following: "Besides these infractions of the positive rules of navigation, the steamer was guilty of fault by her movement to port under a hard-a-starboard wheel, with unabated speed, when she did not know the location or course of the bark."

Also to the following: "She could only conjecture the course of the bark and could not know whether the bark was approaching or was proceeding in the same direction with herself, or whether she was running free or beating to windward on the starboard tack."

Also to the following: "Under such circumstances she had not right to act on conjecture. Her duty was to reduce her speed to the lowest rate compatible with her efficient control, and proceed circumspectly until she could locate the bark and ascertain her course, or until further signals indicated that the bark was beyond the range of risk."

Also to the following: "When such faults on the part of a steamship are shown, her owners are *prima facie* responsible for the collision and must exonerate themselves by satisfactory proof that the sailing vessel was also guilty of misconduct which produced or contributed to the collision."

Also to the following: "The witnesses for the bark, while they differ in the details given, agree that the fog-whistle of the
200 steamer when first heard by them seemed to indicate by the direction of the sound that the steamer's bearing was abeam on the bark's port bow; that very shortly after hearing her whistle they saw the steamer's mast-head light, and then her green light, so near as to render collision apparently inevitable, and that then the mate of the bark told the man at the wheel to port the bark's wheel and shouted to those who were below to save themselves."

Also to the following: "The violence of the blow given by the steamer to the bark shows that the steamer was under rapid headway when she struck the bark."

Also to the following: "The mate of the steamer is the only witness for the claimants who states that the bark changed her course before the alarm was sounded."

Also to the following: "She could not have been half a minute under the helm hard-a-port."

Also to the following, viz: That the evidence of the diver, while alone it might not be enough to authorize the conclusion that the bark was headed N. N. E. at the time of the collision, "is entitled to consideration as measurably supporting that theory, and is more persuasive in fixing her heading approximately than are the conjectural opinions of the witnesses, formed in the excitement and confusion of the moment, who think she was headed about east."

Also to the following: "If she was headed about N. N. E. when she was struck by the steamer she did not change her course more than a point and a half under her port helm."

201 Also to the following: "It is not unreasonable to infer that the steamer while running a minute under her hard-a-starboard helm changed her course to the eastward three or four points."

Also to the following: "And that in the short distance during which she was under her hard-a-port helm, with her engines reversed, she could not have been influenced materially to starboard."

Also to the following, viz: That when the bark's change of course was made the vessels were "within 200 or 300 feet of each other."

Also to the following: "That the bark's change of course was not a fault."

Also to the following: "The case is one for the application of the rule stated in the Carroll."

Eighteenth. They except to the refusal to find that the wind was south, as contained in their first request.

Nineteenth. They except to the refusal to find their second request.

Twentieth. They except to the refusal to find that the speed of the steamer on that night, after the fog set in, was 10 knots, as requested in their fourth finding.

Twenty-first. They except to the refusal to find that the fog set in about 40 minutes past 10 o'clock, as requested in their fifth request.

202 Twenty-second. They except to the refusal to find as to the course and track of the bark in accordance with their eighth request.

Twenty-third. They except to the refusal to find in accordance with their ninth request.

Twenty-fourth. If it is not found that the horn of the bark was heard by those on the steamer about a point on the steamer's starboard bow, as requested in their tenth request, they except to the refusal so to find.

Twenty-fifth. They except to the refusal to find in accordance with their eleventh request.

Twenty-sixth. They except to the refusal to find in accordance with their twelfth request, so far as the same has not been found.

Twenty-seventh. They except to the refusal to find the fourteenth request.

Twenty-eighth. They except to the refusal to find the sixteenth request.

Twenty-ninth. They except to the refusal to find the seventeenth request.

Thirtieth. They except to the refusal to find the eighteenth request.

Thirty-first. They except to the refusal to find the nineteenth request.

203 Thirty-second. They except to the refusal to find the twentieth request.

Thirty-third. If the twenty-first request has not been found, they except to the refusal to find the same.

Thirty-fourth. They except to the refusal to find the twenty-second request.

Thirty-fifth. They except to the refusal to find the twenty-seventh request.

Thirty-sixth. They except to the refusal to find the twenty-eighth request.

Thirty-seventh. They except to the refusal to find their first proposed conclusion of law.

Thirty-eighth. They except to the refusal to find their second proposed conclusion of law.

Thirty-ninth. They except to the refusal to find their third proposed conclusion of law.

Fortieth. They except to the refusal to find their fourth proposed conclusion of law.

Forty-first. They except to the refusal to find the fifth proposed conclusion of law.

Forty-second. They except to the refusal to find the sixth proposed conclusion of law.

204 Forty-third. They except to the refusal to find the seventh proposed conclusion of law.

Forty-fourth. They except to the refusal to find the eighth proposed conclusion of law.

Forty-fifth. They except to the refusal to find the ninth proposed conclusion of law.

Forty-sixth. They except to the refusal to find the tenth proposed conclusion of law.

Forty-seventh. They except to the refusal to find the eleventh proposed conclusion of law.

Forty-eighth. They except to the refusal to find the twelfth proposed conclusion of law.

Forty-ninth. They except to the refusal to find the thirteenth proposed conclusion of law.

Fiftieth. They except to the refusal to find the fourteenth proposed conclusion of law.

Fifty-first. They except to the refusal to find the fifteenth proposed conclusion of law.

Fifty-second. They except to the refusal to find the sixteenth proposed conclusion of law.

A. O. SALTER,
Appellants' Proctor.

205 And forasmuch as none of the said exceptions so offered and made to the said findings and rulings of the said judge do appear on the record of the said trial, therefore, on the prayer of the said claimants of the said steamship, by their counsel, the said judge hath to this bill of exceptions put his seal, according to the statute made and provided, this 26th day of October, 1888.

[L. S.] WM. J. WALLACE.

(Endorsed:) U. S. circuit court, southern district of New York. John Machan *et al.*, libellants and respondents, against The Steamship City of New York, &c.; Francis Alexandre *et al.*, claimants and appellants. A. O. Salter, proctor for claimants and appellants, 67

Liberty St., N. Y. city. U. S. circuit court. Filed Oct. 26th, 1888. John A. Shields.

206 At a stated term of the circuit court of the United States within and for the southern district of New York, second circuit, held at the U. S. court-rooms, in the post-office building, in the city of New York, on the 27th day of October, 1888.

Present: Hon. William J. Wallace, circuit judge.

JOHN MACHAN *et al.*, Libellants & Appellants,
vs.
THE STEAMSHIP "CITY OF NEW YORK;" FRANCIS ALEXANDRE *et al.*, Claimants & Appellants.

The appeal of Francis Alexandre and others, claimants of the steamship "City of New York," from the decree of the district court of the United States for the southern district of New York made and entered in said district court on the 2nd day of July, 1885, as amended by an order of said district court made and entered on the 24th day of February, 1886, and the appeal of John Machan and others, libellants, from such part of said decree as directed the damages herein to be apportioned and awarded nothing to the owners and master of the bark "Helen" and only one-half of their damages to the crew thereof, having been heard upon the apostles and upon the amended pleadings and further proofs taken in the circuit court, and due deliberation having been had, and the circuit judge having made and filed his findings of
207 fact and conclusions of law to the effect that libellants are entitled to a decree against the claimants for the loss of the bark "Helen" and her freight and stores in the sum of sixteen thousand two hundred and eighty-nine $\frac{59}{100}$ ($16,289.59) dollars, with interest thereon from the 28th day of June, 1879; for the loss of cargo in the sum of twenty thousand and fifty-five $\frac{43}{100}$ ($20,055.43) dollars, with interest thereon from the 13th day of June, 1879; for the loss of the personal effects of Captain Barclay in the sum of one thousand and twenty-six $\frac{25}{100}$ ($1,026.25) dollars, with interest thereon from the 28th d*ya* of June, 1879; for the loss of personal effects of William H. Taylor in the sum of two hundred and twenty $\frac{83}{100}$ ($220.83) dollars, with interest thereon from the 28th day of June, 1879; for the loss of personal effects of John Brown in the sum of one hundred ($100) dollars, with interest thereon from the 28th day of June, 1879; for the loss of personal effects of George Camilleri in the sum of seventy-three $\frac{87}{100}$ ($73.87) dollars, with interest thereon from the 28th day of June, 1879; for the loss of personal effects of William Marzan in the sum of eighty-eight ($88) dollars, with interest thereon from the 28th day of June, 1879; for the loss of personal effects of Jens Moller in the sum of fifty-five ($55) dollars, with interest thereon from the 28th day of June, 1879, and awarding libellants their costs in the district court and in this court:

Now, on motion of George A. Black, proctor for libellants, it is—

Ordered, adjudged, and decreed that so much of the decree
208 of the district court of the United States for the southern district of New York as directs the damages herein to be apportioned and awards nothing to the owners and master of the bark "Helen" and only one-half of their damages to the crew thereof be reversed, and that the libellants, John Machan, Robert Reid, William Nicoll, Alexander Thomson, Peter Kinnear, Thomas Erskine Methven, and Elizabeth McGregor, owners of the bark "Helen," recover against the Steamship "City of New York," her engines, boilers, &c., the sum of sixteen thousand two hundred and eighty-nine $\frac{59}{100}$ ($16,289.59) dollars, with interest thereon from the 28th day of June, 1879, amounting to the sum of nine thousand one hundred and nineteen $\frac{45}{100}$ ($9,119.45) dollars, and amounting together to the sum of twenty-five thousand four hundred and nine $\frac{4}{100}$ ($25,409.04) dollars; and it is—

Further ordered that the said libellants, as carriers of the cargo laden on board of said vessel, recover against the steamship "City of New York," her engines, boilers, &c., for the use and benefit of the Atlantic Mutual Insurance Company, insurers of said cargo, the sum of twenty thousand and fifty-five $\frac{43}{100}$ ($20,055.43) dollars, with interest thereon from the 13th day of June, 1879, amounting to the sum of eleven thousand two hundred and seventy-seven $\frac{83}{100}$ ($11,277.83) dollars, and amounting together to the sum of thirty-one thousand three hundred and thirty-three $\frac{26}{100}$ ($31.333.26) dollars; and it is—

Further ordered that the said libellants recover against the steamship "City of New York," her engines, boilers, &c., for the benefit of the following-named persons, officers and seamen of the
209 said bark "Helen," on account of their loss of personal effects, as follows:

For the use of the next of kin and legal representatives of Robert Barclay, deceased, the sum of one thousand and twenty-six $\frac{25}{100}$ ($1,026.25) dollars, with interest thereon from the 28th day of June, 1879, amounting to the sum of five hundred and seventy-four $\frac{53}{100}$ ($574.53) dollars, and amounting together to the sum of one thousand six hundred $\frac{78}{100}$ ($1,600.78) dollars.

For the use of William H. Taylor the sum of two hundred and twenty $\frac{83}{100}$ (220.83) dollars, with interest thereon from the 28th day of June, 1879, amounting to the sum of one hundred and twenty-three $\frac{63}{100}$ ($123.63) dollars, and amounting together to the sum of three hundred and forty-four $\frac{46}{100}$ ($344.46) dollars.

For the use of John Brown the sum of one hundred ($100) dollars, with interest thereon from the 28th day of June, 1879, amounting to the sum of fifty-five $\frac{98}{100}$ ($55.98) dollars, and amounting together to the sum of one hundred and fifty-five $\frac{98}{100}$ ($155.98) dollars.

For the use of George Camilleri the sum of seventy-three $\frac{87}{100}$ ($73.87) dollars, with interest thereon from the 26th day of June, 1879, amounting to the sum of forty-one $\frac{35}{100}$ ($41.35) dollars, and amounting together to the sum of one hundred and fifteen $\frac{22}{100}$ ($115.22) dollars.

For the use of William Marzan the sum of eighty-eight ($88) dollars, with interest thereon from the 28th day of June, 1879, amounting to the sum of forty-nine $\frac{26}{100}$ ($49.26) dollars, and amounting together to the sum of one hundred and thirty-seven $\frac{26}{100}$ ($137.26) dollars.

210 For the use of Jens Moller the sum of fifty-five ($55) dollars, with interest thereon from the 28th day of June, 1879, amounting to the sum of thirty $\frac{79}{100}$ ($30.79) dollars, and amounting together to the sum of eighty-five $\frac{79}{100}$ ($85.79) dollars.

And the said several sums above mentioned amounting in all to the sum of fifty-nine thousand one hundred and eighty-one $\frac{79}{100}$ ($59,181.79) dollars. It is—

Ordered, adjudged, and decreed that the libellant herein have judgment against the said steamship "City of New York," her tackle, &c., for the said sum of fifty-nine thousand one hundred and eighty-one $\frac{79}{100}$ ($59,181.79) dollars, together with their costs in the district court, taxed at the sum of five hundred and thirty-eight $\frac{30}{100}$ ($538.30) dollars, and of this court, taxed at the sum of five hundred and three $\frac{3}{100}$ ($503.03) dollars, amounting in all to the sum of sixty thousand two hundred and twenty-three $\frac{12}{100}$ ($60,223.12) dollars; and it is—

Further ordered that unless an appeal be taken from this decree within the time limited by the rules and practice of this court, and security be given, as required by law, to stay execution within ten days after the entry of this decree, that Francis Alexandre, stipulator for costs and for value of said steamship "City of New York," cause the engagements of said stipulation to be performed or show cause within four days after the expiration of said time to give said security, or on the first day of jurisdiction thereafter, why sum-

211 mary judgment should not be entered against him to the amount of his said stipulations and interest thereon and why execution for the amount of such stipulations and interest should not issue against his goods, chattels, and lands; and it is—

Further ordered, unless an appeal be duly taken and execution stayed, that a summary judgment be entered against Francis Alexandre, John F. Alexandre, J. Joseph Alexandre, and J. Henry Alexandre, sureties and claimants, upon their said appeal for the sum of sixty thousand ($60,000) dollars, the amount of their said bond, upon the expiration of ten days after the entry of this decree, and that execution issue thereon to satisfy this decree.

WM. J. WALLACE.

(Endorsed:) U. S. circuit court, southern district of New York. John Machan *et al. vs.* The Steamship "City of New York," her engines, &c., Francis Alexandre *et al.* Decree. George A. Black, proctor for l'b't, &c., 71 Wall street, New York city. U. S. circuit court. Filed Oct. 27, 1888. John A. Shields, clerk.

JOHN MACHAN, ROBERT REID, WILLIAM NICOLL, ALEXANDER Thomson, Peter Kinnear, Thomas Erskine Methven, and Elizabeth McGregor, Owners of the British Bark "Helen" and as Carriers of the Cargo Laden on Board and in Behalf of the Next of Kin and Legal Representatives of Robert Barclay, Deceased, Late Master of said Bark; William H. Taylor, First Mate; John Brown, William Marzan, Jens Moller, and George Camilleri, Seamen of said Bark, Respondents,

against

THE AMERICAN STEAMSHIP "CITY OF NEW YORK," HER ENGINES, Tackle, and Apparel; Francis Alexandre, John E. Alexandre, J. Joseph Alexandre, and J. Henry Alexandre, Claimants and Appellants.

To the honorable the Supreme Court of the United States:

The appeal of Francis Alexandre, John E. Alexandre, J. Joseph Alexandre, and J. Henry Alexandre, the above-named claimants and appellants, respectfully shows that on the third day of July, 1879, the above-named John Machan, Robert Reid, William Nicoll, Alexander Thomson, Peter Kinnear, Thomas Erskine Methven, and Elizabeth McGregor, owners of the British bark "Helen" and as carriers of the cargo laden on board and in behalf of the next of kin and legal representatives of Robert Barclay, deceased, late master of said bark; William H. Taylor, first mate; John Brown, William Marzan, Jens Moller, and George Camilleri, seamen of said bark, filed their libel in the district court of the United States for the southern district of New York against the American steam-
213 ship "City of New York," her engines, tackle, apparel, &c., in a cause civil and maritime for the recovery of damages alleged to have been sustained by them to the British bark "Helen" and her cargo, &c., by collision with the said steamship "City of New York" in the Atlantic ocean, off the coast of New Jersey, between Absecon and Barnegat, and that the said steamship "City of New York" was arrested upon process issued upon said libel, and was discharged on your petitioners filing their claim and entering into stipulations; and your petitioners thereupon filed their answer to said libel, and the said libellants replied thereto, and such proceedings were had in the said cause that on the second day of July, 1885, a final decree was made and pronounced therein by the said district court, whereby it was decreed that the damages be apportioned between the parties, and that the libellants recover in the action, for the use and benefit of various persons, sums amounting to twenty-seven thousand six hundred and ninety-seven and $\frac{87}{100}$ — ($27,697.87), together with costs, and that after such final decree your petitioners, as also the libellants, appealed from said decree to the circuit court of the United States for the southern district of New York, and the said action was thereby removed to the circuit court and there tried anew, and such proceedings were had in the said circuit court that afterwards, on the twenty-seventh day of October,

1888, said circuit court made a final decree in this cause, whereby it was decreed that the decree of the district court was erroneous, and that the libellants were entitled to recover all the damages by them sustained by reason of such collision, amounting to the
214 sum of fifty-nine thousand one hundred and eighty-one $\frac{79}{100}$ dollars ($59,181.79), besides costs; which said decree of the said circuit court is, as these appellants are advised, erroneous and ought to be reversed.

Wherefore these appellants appeal from the whole of the said decree of said circuit court to the Supreme Court of the United States and respectfully pray that the decree of the said circuit court and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court and every part thereof may be reversed and a decree made dismissing said libel with costs, or such other decree as to the Supreme Court shall seem just.

Dated New York, December 3rd, 1888.

A. OLDRIN SALTER,
Proctor for Claimants, 67 Liberty Street, New York City.

R. D. BENEDICT, *Advocate.*

Allowed.
Dec. 6, 1888.

E. HENRY LACOMBE.

215 (Endorsed:) Supreme Court. John Machan *et al.* against The Steamship "City of New York." Appeal. A. Oldrin Salter, proctor for claimants, 67 Liberty street, New York city. Due service of a copy of within appeal is hereby admitted December 7, 1888. Geo. A. Black, libellants' proctor. U. S. circuit court. Filed Dec. 7, 1888. John A. Shields, clerk.

216 Circuit Court of the United States of America for the Southern District of New York.

JOHN MACHAN *et al.*, Libellants and Appellees,
vs.
THE STEAMSHIP "CITY OF NEW YORK," &c.; FRANCIS ALEXANDRE *et al.*, Claimants and Appellants.

Know all men by these presents that we, Francis Alexandre, John E. Alexandre, J. Joseph Alexandre, and J. Henry Alexandre and the American Surety Company of New York, are held and firmly bound unto John Machan, Robert Reid, William Nicoll, Alexander Thomson, Peter Kinnear, Thomas Erskine Methven, and Elizabeth McGregor, owners of the bark "Helen," in the sum of eighty thousand dollars ($80,000), to be paid to the said John Machan, Robert Reid, William Nicoll, Alexander Thomson, Peter Kinnear, Thomas Erskine Methven, and Elizabeth McGregor, their

heirs, executors, administrators, or assigns; for the payment of which, well and truly to be made, we, the said Francis Alexandre, John E. Alexandre, J. Joseph Alexandre, and J. Henry Alexandre, bind ourselves and each of us, our and each of our heirs, executors, administrators, and the said American Surety Company binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 30th day of November,
217 in the year of our Lord one thousand eight hundred and eighty-eight.

Whereas Francis Alexandre, John E. Alexandre, J. Joseph Alexandre, and J. Henry Alexandre, as appellants, have appealed to the Supreme Court of the United States from a decree of the circuit court of the United States for the southern district of New York, in the second circuit, bearing date the 27th day of October, 1888, in a suit in which the said John Machan, Robert Reid, William Nicoll, Alexander Thomson, Peter Kinnear, Thomas Erskine Methven, and Elizabeth McGregor are libellants and appellees, against the steamship "City of New York," her engines, boilers, tackle, etc., Francis Alexandre, John E. Alexandre, J. Joseph Alexandre, and J. Henry Alexandre, claimants and appellants:

Now, therefore, the condition of this obligation is such that if the above-named appellants, Francis Alexandre, John E. Alexandre, J. Joseph Alexandre, and J. Henry Alexandre, shall prosecute said appeal with effect and pay all damages and costs which shall be awarded against them as such appellants therein if they shall fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

F. ALEXANDRE, [SEAL.]
By JNO. E. ALEXANDRE, *Att'y.*
JNO. E. ALEXANDRE. [SEAL.]
J. J. ALEXANDRE. [SEAL.]
J. HENRY ALEXANDRE, [SEAL.]
By JNO. E. ALEXANDRE, *Att'y.*
218 AMERICAN SURETY COMPANY OF NEW YORK, [SEAL.]
[SEAL.] By HENRY D. LYMAN, *Vice-President.*
FRED. F. NUGENT, *Secretary.*

Signed, sealed, and delivered in the presence of—
H. G. HINTON.

This bond approved as to form, amount, and sufficiency of surety.
Dated New York, Dec. 6th, 1888.
E. HENRY LACOMBE.

GEO. A. BLACK, *Proc. Lib't.*

STATE OF NEW YORK, } *ss:*
County of New York, }

On this 5th day of December, in the year one thousand eight hundred and eighty-eight, before me personally came John E. Alex-

andre and J. Joseph Alexandre, to me known and known to me to be two of the individuals described in and who executed the foregoing and within instrument, and they severally duly acknowledged to me that they had executed the same.

H. G. HINTON,
Notary Public, Kings Co., N. Y.

[SEAL.]

Cert. filed in N. Y. Co.

219 STATE OF NEW YORK, } *ss:*
City and County of New York, }

On this 5th day of December, 1888, before me personally came John E. Alexandre, the attorney-in-fact of Francis Alexandre and J. Henry Alexandre, known to me to be the individual described in and who, as such attorney of said Francis Alexandre and J. Henry Alexandre, executed the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said Francis Alexandre and J. Henry Alexandre therein described, and for the purposes therein mentioned, by virtue of two certain powers of attorney duly executed by the said Francis Alexandre, bearing date the 13th day of May, 1878, and J. Henry Alexandre, bearing date the 13th day of January, 1881, respectively; which said powers of attorney are now held by and are now in the possession of the said American Surety Company.

H. G. HINTON,
Notary Public, Kings Co., N. Y.

[SEAL.]

Cert. filed in N. Y. Co.

UNITED STATES OF AMERICA, } *ss:*
Southern District of New York, }

On this 30th day of November, 1888, before me personally appeared Henry D. Lyman, vice-president of the American Surety Company, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the city of New York; that he is the vice-president of the American Surety Company of
220 New York; that he knew the corporate seal of said company; that the seal affixed to the within instrument is such corporate seal; that it was affixed by order of the board of directors of said company, and that he signed said instrument as vice-president of said company by like authority; and the said Henry D. Lyman further said that he is acquainted with Fred. F. Nugent and knew him to be the secretary of said company; that the signature of the said Fred. F. Nugent subscribed to said instrument is in the genuine handwriting of the said Fred. F. Nugent and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said Henry D. Lyman, vice-president.

H. G. HINTON,
Notary Public, Kings Co., N. Y.

[SEAL.]

Cert. filed in N. Y. Co.

At a meeting of the board of directors of the American Surety Company held at the office of the company on the 9th day of June, 1886, on motion, it was—

"Resolved, That in pursuance of chapter 416, Laws of 1886, amending section eight hundred and eleven of the Code of Civil Procedure, the president or vice-president be, and either of them is, hereby authorized and empowered to sign, execute, and deliver any and all bonds or undertakings for or on behalf of the company, and to attach thereto the seal of the company, the same to be attested by the secretary or assistant secretary."

221 CITY AND COUNTY OF NEW YORK, *ss:*

I, Frederick F. Nugent, secretary of the American Surety Company, have compared the foregoing resolution with the original thereof as recorded in the minute book of said company and do certify that the same is a correct and true transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the company, at
[SEAL.] the city of New York, this 30th day of November, 1888.

FRED. F. NUGENT, *Secretary.*

(Endorsed:) U. S. circuit court, southern district of New York. John Machan *et al.*, libellants & appellees, ag'st The Steamship "City of New York," &c.; Francis Alexandre *et al.*, claimants & appellants. Bond on appeal. U. S. circuit court. Filed Dec. 7, 1888. John A. Shields, clerk.

222 By the Honorable E. Henry Lacombe, one of the judges of the circuit court of the United States for the southern district of New York.

To John Machan, Robert Reid, William Nicoll, Alexander Thomson, Peter Kinnear, Thomas Erskine Methven, and Elizabeth McGregor, owners of the British bark "Helen" and as carriers of the cargo laden on board and in behalf of the next of kin and legal representatives of Robert Barclay, deceased, late master of said bark; William H. Taylor, first mate; John Brown, William Marzan, Jens Moller, and George Camilleri, seamen of said bark:

Whereas Francis Alexandre, John E. Alexandre, J. Joseph Alexandre, and J. Henry Alexandre, claimants of the American steamship "City of New York," her engines, tackle, apparel, &c., have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for for the southern district of New York, in the second circuit, made in favor of you, the said John Machan, Robert Reid, William Nicoll, Alexander Thomson, Peter Kinnear, Thomas Erskine Methven, and Elizabeth McGregor, owners of the British bark "Helen" and as carriers of the cargo laden on board and in behalf of the next of kin and legal representatives of Robert Barclay, deceased, late master of said bark; William H. Taylor, first mate; John Brown, William Marzan, Jens Moller, and George Camilleri, seamen of said bark, against the said American steamship "City of New York," her engines, tackle,

apparel, &c., and have filed the security required by law, you
223 are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October, A. D. 1889, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the sixth day of December, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States the one hundred and thirteenth.

E. HENRY LACOMBE.

(Endorsed:) Supreme court. John Machan *et al.* against The Steamship "City of New York." Citation of appeal. A. Oldrin Salter, proctor for claimants, 67 Liberty street, New York city. Personal service of a copy of within citation is hereby admitted. December 7th, 1888. Geo. A. Black, libellants' proctor. U. S. circuit court. Filed Dec. 7, 1888. John A. Shields, clerk.

224 UNITED STATES OF AMERICA, } *ss:*
Southern District of New York, }

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 223, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of John Machan, Robert Reid, William Nicoll, Alexander Thomson, Peter Kinnear, Thomas Erskine Methven, and Elizabeth McGregor, owners of the British bark "Helen" and as carriers of the cargo laden on board and in behalf of the next of kin and legal representatives of Robert Barclay, deceased, late master of said bark; William H. Taylor, first mate; John Brown, William Marzan, Jens Moller, and George Camilleri, seamen, of said bark, respondents and appellees, against The American Steamship "City of New York," her engines, tackle, and apparel; Francis Alexandre, John E. Alexandre, J. Joseph Alexandre, and J. Henry Alexandre, claimants and appellants, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 12th day of July, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence of the said United States the one hundred and fourteenth.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS, *Clerk.*

Endorsed on cover: Case No. 13,592. S. New York C. C. U. S. No. 386. John E. Alexandre, J. Joseph Alexandre, and J. Henry Alexandre, executors of Francis Alexandre, deceased, *et al.*, claimants of the American steamship "City of New York," her engines, &c., appellants, *vs.* John Machan *et al.*, owners of the British bark "Helen," &c. Filed July 31, 1889.

Office Supreme Court U. S.
FILED.
JAN 27 1890
JAMES H. McKENNEY,
CLERK

C. G. Burgoyne's Printing Business, 146-150 Centre St., N. Y.

U. S. Circuit Court,

SOUTHERN DISTRICT OF NEW YORK.

MACHAM ET AL.

vs.

The Steamship "CITY OF NEW YORK" ET AL.

FINDINGS OF FACT.

I.

The British bark "Helen," an iron vessel of 282 tons register, while on a voyage from Havana to New York City, loaded with sugar, was sunk by collision with the steamship "City of New York," June 28, 1879, about 10:50 P. M. The captain and three of the seamen of the bark were drowned when the vessel sunk.

II.

The collision took place at a point off the coast of New Jersey six and one quarter miles from shore in 10 fathoms of water, 12½ miles from Barnegat Light House and 9½ miles from Tucker's Beach Light House.

The "City of New York" was a wooden steamship 242 feet long and 1,715 tons register, having a left-handed propeller, and was bound on a voyage from New York to Havanna. Her full speed was about 12 knots an hour, and when going at full speed her headway could not be stopped by reversing her engines within a distance of an eighth of a mile.

III.

On the night in question the wind was blowing strong from the southwest or the south southwest. About half an hour preceding the collision the night became **foggy, so much so that vessels could not discover one another at a distance of one-eighth of a mile.** During this time and until within about three or four minutes before the collision, the vessels had been approaching each other, the course of the steamer being about S. x W. ½ W., and the course of the bark being about N. E. The steamship was going *about 11 knots* an hour, which was *all the speed* she could make *against the wind;* the bark was going about 4 knots an hour; and each vessel kept her respective course until she heard the fog signal of the other.

IV.

During the half-hour preceding the collision three seamen were on the deck of the bark besides the mate, one seaman being at the wheel and two on the lookout forward, alternately blowing the fog-horn, and the bark's lights were properly set and burning. During the same time the navigation of the steamer was in charge of her second mate, her quartermaster was at the wheel, her engine was in charge of a competent engineer, she had a lookout on the forward deck and her regulation lights were properly set and burning. The lookout on each

vessel was vigilant. Each vessel observed the proper fog signals. The **steamer maintained her full speed against** *the wind* **until her engines were reversed just before she struck the bark.**

V.

Before either vessel discovered the other those in charge of each heard the fog signals of the other. At about two minutes prior to the collision those in charge of the steamer first heard the fog horn of the bark and from the apparent direction of the sound thought she was one point off the steamer's starboard bow. Immediately upon hearing the fog-horn the mate ordered the wheel of the steamer put to starboard and hard-a-starboard. The order was promptly executed, and **the steamer proceeded on under full speed,** until those in charge discovered the sails of the bark. The steamer had run under hard-a-starboard helm at *least a minute before the bark was seen.* Those in charge of the steamer then discovered that the bark's course was eastward across the steamer's bow. The *steamer then sounded successive whistles of alarm,* and *those in charge saw the bark luffing to the starboard.* Thereupon the mate *immediately* ordered the steamer's engines reversed and her wheel ported, and this order was promptly executed, but she was then close to the bark, *probably not to exceed 150 feet,* and her headway could not be stopped in time to avoid a collision, and the steamer struck the bark on the bark's port side, her stem striking just forward of the bark's mizzen rigging with such force that she penetrated the bark a distance of five feet, and the bark sank almost immediately.

The whistle of the steamer first heard by those in charge of the bark indicated to them that the vessels were quite near to each other. They thought the steamer was approaching, bearing abeam on the bark's port side. Immediately after they saw her masthead light,

and then her green light, whereupon the mate told the wheelsman to port the wheel and *called to those below to save themselves.* **The man at the wheel had hardly got the wheel over when the steamer struck the bark.** During the time the steamer was running under her hard-a-starboard wheel she changed her course to the eastward three or four points, and the bark, after she luffed, changed her course one or two points by the time the vessels came together.

VI.

By the collision the bark, her cargo and freight, together with the personal effects of the officers and crew, were totally lost. The value of the bark, her stores and pending freight, was $16,289.59. The value of the cargo on board the said bark was the sum of $20,055.43. The personal effects of Captain Barclay were of the value of $1,026.25. The personal effects of the mate, W. H. Taylor, were of the value of $220.83. The personal effects of John Brown were of the value of $100. The personal effects of George Camilleri were of the value of $73.87. The personal effects of William Marzan were of the value of $88. The personal effects of Jens Moller were of the value of $55. The steamer also received severe injuries, the amount of damage approximating $7,000.

CONCLUSIONS OF LAW.

I.

The steamer was guilty of fault in violating the 21st rule because she did not slacken her speed when she heard the fog signals of the bark, and also because she did not go at a moderate speed when in a fog, and also

because she changed her course and kept on at a great speed after she heard the bark's fog horn before seeing her.

II.

The bark's change of course was an error *in extremis*.

III.

That the libellants are entitled to a decree against the claimants for the loss of the bark "Helen" and her freight and stores for the sum of $16,289.59, with interest from the 28th of June, 1879.

For the loss of the cargo the sum of $20,055.43, with interest from the 13th day of June, 1879.

For the loss of personal effects of Captain Barclay for the sum of $1,026.25, with interest from the 28th of June, 1879.

For the loss of the personal effects of William H. Taylor for the sum of $220.83, with interest from the 28th of June, 1879.

For the loss of the personal effects of John Brown for the sum of $100, with interest thereon from the 28th June, 1879.

For the loss of the personal effects of George Camelleri for the sum of $73.87, with interest thereon from 28th of June, 1879.

For the loss of the personal effects of William Marzan for the sum of $88, with interest thereon from the 28th of June, 1879.

For the loss of the personal effects of Jens Moller for the sum of $55, with interest thereon from the 28th of June, 1879. The libellants are awarded their costs in the District Court and in this Court to be taxed.

Office Supreme Court U. S.
FILED.
JAN. 27 1890
JAMES H. McKENNEY,
CLERK

C. G. Burgoyne's Printing Business, 146-150 Centre St., N. Y.

1

Supreme Court of the United States,

2

JOHN MACHAN ET AL.,
Libellants and Appellees,

vs.

The Steamship "CITY OF NEW YORK,"
Her Engines, &c.,
ALEXANDRE ET AL.,
Claimants and Appellants.

1185

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Please take notice that upon the return filed herein, and on the affidavit with a copy of which you are herewith served, I shall move this Court at a stated term thereof to be held at the Capitol in the City of Washington on Monday, the 27th day of January, 1890, at the opening of Court at 12 o'clock, or as soon thereafter as counsel can be heard for the following relief:

FIRST. That there be struck from the return filed herein on July 31, 1889, all testimony, depositions, diagrams and exhibits, on the ground that the said matter is improperly returned to this Court and is not permitted under Sub-division 6 of Rule 8. 4

SECOND. That there be struck from said return the writing which purports to be an exception to the opinion of the Court herein, and which is numbered 17 in

the Exceptions, as unauthorized and not permitted by the rules and practice of this Court or of the Circuit Court.

THIRD. That there be struck from said return Exceptions numbered 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36; the same being all of them exceptions to refusal to find matters of fact requested by claimants, on the ground that the same are not matters of exception under the rules and practice of this Court, or of the Circuit Court.

FOURTH. That there be struck from said return Exceptions numbered 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 and 53, being all exceptions to refusal to find proposed conclusions of law, on the ground that the same are not matters of exception under the rules of this Court, or of the Circuit Court.

Dated New York, January 17, 1890.

Yours, &c.,

GEO. A. BLACK,
Proctor for Libellants.

To W. H. SALTER, ESQ.,
Proctor for Claimants.

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SUPREME COURT OF THE UNITED STATES.

JOHN MACHAN ET AL.,
Libellants and Appellees,

vs.

The Steamship "CITY OF NEW YORK,"
her Engines, &c.,
ALEXANDRE ET AL.,
Claimants and Appellants.

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SOUTHERN DISTRICT OF NEW YORK, ss.:

GEORGE A. BLACK, being duly sworn, says that he is the proctor for the libellants Machan *et al.* in the above-entitled action.

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That he has carefully examined the return herein prepared by the Clerk of the Circuit Court, and filed in this Court on the 31st day of July, 1889, and that the bill of exceptions contained in such return sets forth a large part of the testimony, depositions, exhibits and diagrams used on the trial of this case in the Circuit Court, but there is not one exception to the admission or exclusion of evidence contained in said bill of exceptions or return, nor is there a single exception to any finding of fact on the ground that the same is against the evidence, and without evidence to sustain it.

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That the 17th exception consists of an exception to the opinion of the Court, and that exceptions 18 to 36, both inclusive, are all exceptions to refusals to find matters of fact requested by the claimants, and that exceptions 37 to 53, both inclusive, are all exceptions

to refusals to find proposed conclusions of law requested by the claimants.

GEO. A. BLACK.

Sworn to before me
January 17, 1890.

LAWRENCE KNEELAND,
[SEAL.] Notary Public,
Kings Co.

Cert. filed in N. Y. Co.

SUPREME COURT OF THE UNITED STATES.

JOHN MACHAN ET AL.

VERSUS

The Steamship "CITY OF NEW YORK."

Affidavit of Service.

SOUTHERN DISTRICT OF NEW YORK, ss.:

STATE OF NEW YORK,
City and County of New York, } ss.:

FRANK W. REYNOLDS, being duly sworn, says that he is above the age of sixteen years and that on the 17th day of January, in the year one thousand eight hundred and ninety, he served the annexed affidavit and notice of motion on Wm. H. Salter, Esq., proctor for claimants in this action, at No. 140 Nassau street, in

the City of New York, by delivering a copy of the same 17
to, and leaving the same with him.

(Sgd.) FRANK W. REYNOLDS.

Sworn to before me this 18th }
day of January, 1890. }

LAWRENCE KNEELAND,

[SEAL.] Notary Public,
Kings Co.

Cert. filed in N. Y. Co

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Office Supreme Court U. S.
FILED.
JAN 27 1890
JAMES H. MCKENNEY.
CLERK.

C. G. Burgoyne's Printing Business, 146-150 Centre St., N. Y.

U. S. Supreme Court.

JOHN MACHAN ET AL.,
Libellants and Appellees,

vs.

The Steamship "CITY OF NEW YORK,"
ALEXANDRE ET AL.,
Claimants and Appellants.

No. 1,185.

Brief for Libellants on Motion to Strike Testimony, &c., from Files.

I. Subdivision 6 of Rule 8 of the United States Supreme Court reads as follows:

> "The record in cases of admiralty and maritime "jurisdiction, when, under the requirements of "law, the facts have been found in the Court be- "low, and the power of review is limited to the "determination of questions of law arising on the "record, shall be confined to the pleadings, the "findings of fact and conclusions of law thereon, "the bills of exceptions, the final judgment or de- "cree, and such interlocutory orders and decrees as "may be necessary to a proper review of the case."

This rule was made in consequence of the examination made by this Court on a similar motion to the present, in the case of the Adriatic (103 U. S., 730).

Under the *guise* of a bill of exceptions the testimony and exceptions in this case have been sent up from the Circuit Court. Such matter has no proper place in a bill of exceptions.

As is stated in the case of the Frances Wright (105 U. S., 381):

(389) "Every bill of exceptions must state and "point out distinctly the errors of which com- "plaint is made. It ought also to show the "grounds relied on to sustain the objection pre- "sented, so that it may appear the Court below "was properly informed as to the point to be de- "cided. It is needless to say that this bill of excep- "tions meets none of these requirements. From "anything which is here presented no judge would "be presumed to understand that the specific "objection made to any one of his findings was "that no evidence whatever had been intro- "duced to prove it, or to one of his refusals, that "the fact refused was material and had been con- "clusively shown by uncontradicted testimony. "No ground whatever is stated for any one of all "the exceptions that have been taken. To entitle "the appellants to be heard here upon any such "objections as they now make to the findings, "they should have stated to the Court that they "considered the facts refused material to the "determination of the cause, and that such facts "were conclusively proven by uncontradicted evi- "dence. Under such circumstances it might have "been permissible to except to the refusal and "present the exception by a bill of exceptions, "which should contain so much of the testimony "as was necessary to show that the fact as claimed "had been conclusively proven."

(389) " We have no hesitation in saying that " this is not a proper way of preparing a bill of " exceptions to present to this Court for review, " rulings of the Circuit Court such as are now " complained of."

The affidavit annexed to the motion papers shows (at fol. 11) that

" there is not one exception to the admission or " exclusion of evidence contained in said bill of ex- " ceptions or return, nor is there a single exception " to any finding of fact on the ground that the " same is against the evidence, and without evi- " dence to sustain it."

II. The second portion of the motion is that the writing which purports to be an exception to the opinion of the Court, numbered 17, is unauthorized.

In the case of the Elizabeth Jones (112 U. S., 519) the Court says :

" The opinion of that Court, although, as re- " quired by a rule of this Court, annexed to and " transmitted with the record, is no part of it."

In the Annie Lindsley (104 U. S., 188) the Court said :

" We cannot look into the evidence or the *Opin-* " *ion* of the Court to ascertain the facts."

III. In Merchants' Ins. Co. vs. Allen (121 U. S., 67) the bill of exceptions had been prepared containing the entire evidence in the case, which was signed by the Circuit Judge (71) with the remark that :

" This bill is claimed by the respondent under

" the authority of the Francis Wright, 105 U. S.,
" 381, considering which case the Court does not
" feel at liberty to deny the bill."

The Court quotes from the opinion in the case of the Francis Wright (71) as follows:

" Questions depending on the weight of evi-
" dence are, under the law as it now stands, to be
" conclusively settled below; and the fact in re-
" spect to which such an exception may be taken
" must be one of the material and ultimate facts
" on which the correct determination of the cause
" depends."

(72) " The apparent purpose of counsel in pre-
" paring the bills of exceptions was to have the
" whole case retried here on all the evidence. That
" this cannot be done since the Act of 1875 has
" long been settled."

Lastly. The motion should be granted.

Respectfully submitted.

GEO. A. BLACK,
Counsel for Libellants.